

NEW JERSEY TASK FORCE
ON THE ECONOMIC DEVELOPMENT
AUTHORITY'S TAX INCENTIVES

PUBLIC HEARING
Newark, New Jersey
May 2, 2019

B E F O R E :

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<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">May 2, 2019 10:00</p> <p style="text-align: center;">Public Hearing, held at the Rutgers Law School, Baker Trial Courtroom 125, 123 Washington Street, Newark, New Jersey 07102, before David Levy, a Certified Court Reporter and Notary Public of the State of New Jersey.</p>	<p style="text-align: right;">Page 3</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>PROF. CHEN: Good morning, everyone. My name is Ronald Chen. I'm a professor here at Rutgers Law School. I want to welcome you all to our second public hearing held by the New Jersey Task Force on the Economic Development Authority's Tax Incentives.</p> <p>As most of you already know, Governor Philip Murphy signed Executive Order number 52 on January 24th, 2019 which established the Task Force. I have been appointed to lead the Task Force as chair and carry out the commission to conduct an in-depth examination of the design and implementation and oversight of two tax incentive programs.</p> <p>Before I further explain our mission and goals, let me reintroduce the members of my team. I'm assisted in this task by my personal Special Counsel, Walden Macht & Haran. Jim Walden is leading the team, to my left, your right, and he's being assisted by Georgia Winston, Milt Williams and Avni Patel.</p> <p>We also have, sitting to my right,</p>
<p style="text-align: right;">Page 4</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Opening remarks - Chen Pablo Quinones of Quinones Law serving as Special Counsel and providing corporate compliance expertise to the team.</p> <p>I explained the background leading up to our work at our first public hearing on March 28, so I will not repeat those remarks here.</p> <p>Before and after that hearing, our team has been hard at work. Thankfully, the cooperation we're getting from most parties we have contacted has been robust.</p> <p>At the last hearing, I announced my decision to offer an Accelerated Recertification Program for companies, which I will refer to as the ARP and which is not in any way referring to EDA's own annual recertification program. Companies can elect to participate in the ARP if they believe, A, they applied for tax incentives in good faith and B, they are in compliance with program requirements, by providing timely and complete cooperation, a company will benefit, from an accelerated determination from the Task Force about its</p>	<p style="text-align: right;">Page 5</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Opening remarks - Chen compliance with the requirements of the tax incentive program. Companies will not be eligible to participate in the ARP process, however, if we have information suggesting that either potential misconduct or other significant irregularities require a deeper investigation, and that is true thus far of approximately nine companies which we have identified as entities of concern. I will come back to that in a moment.</p> <p>To streamline the ARP, I have approved a recertification process that will culminate in companies submitting to the Task Force an affidavit swearing to certain facts and attaching detailed verified information to prove their compliance and good faith. The affidavit and documentation goes well beyond what the EDA typically requires for both programs. During the ARP process, the Special Counsel team led by Pablo will investigate the information and then make a recommendation as to how to proceed with each individual company.</p> <p>I will review their recommendation and</p>

<p style="text-align: right;">Page 6</p> <p>1 Opening remarks - Chen 2 either conclude our investigation of that 3 company, or refer for further investigation 4 by Special Counsel, or take other steps 5 depending on other information received by 6 the Task Force. 7 To date, 41 eligible companies have 8 elected to participate in the ARP. Not 9 every company who got a Grow or ERL award, 10 the two programs at issue, have done so. 11 For all those companies not in the ARP, I 12 plan to go to conduct a thorough 13 investigation of their awards. For 14 companies who refuse to cooperate with the 15 investigation two things will happen: 16 I will issue a subpoena for the 17 documents, and I will request that the EDA 18 determine whether the failure to cooperate 19 in our probe runs afoul of contractual or 20 regulatory requirements. 21 Today's hearing will focus on a few 22 topics, but mainly we plan to present 23 witnesses relevant to EDA's oversight of the 24 tax incentive program. In a moment. Jim 25 Walden will explain what we hope to</p>	<p style="text-align: right;">Page 7</p> <p>1 Opening remarks - Chen 2 accomplish today, as we have many witnesses. 3 But I would like to note one 4 difference between this hearing and the last 5 one. At the last hearing, we objected 6 against naming specific companies and 7 individuals, in part based on fairness 8 concerns and in part because we were at the 9 very beginning of our work. 10 For some companies, we are still 11 digging into the facts. For others, we know 12 much more. We have secured very important 13 documents and corroboration from cooperating 14 witnesses which have helped us better 15 understand some of the critical problems 16 with some of these applications. And some 17 of the comments, including members of the 18 legislature, said that the public had the 19 right to know more information about what we 20 are finding as we investigate. 21 That is a fair point. Executive Order 22 52 requires us to hold public hearings. And 23 part of the purpose of such hearings is to 24 provide transparency about the design, 25 implementation and oversight of the EDA</p>
<p style="text-align: right;">Page 8</p> <p>1 Opening remarks - Chen 2 programs. And the fact remains that much of 3 the information we will be outlining here 4 today is either available through public 5 record requests or through online searches. 6 Thus, I've decided that we should, in 7 today's proceedings, provide certain names 8 as part of the public record. 9 To the extent that any entity or 10 individual might be adversely portrayed, 11 we've endeavored to notify them in advance, 12 although we are not required to, and will 13 give them the opportunity to submit a sworn 14 statement with relevant facts which will be 15 read at the next day of our proceeding. 16 And I want to further caution you here 17 that we are only a few months into our 18 investigation after an initial ramp-up 19 period. So even adverse inferences we may 20 elicit may be tempered or rebutted by other 21 evidence we may find later. 22 This is a hearing, not a trial. In 23 other words, although our mandate requires 24 public hearings, everyone should expect us 25 to follow the facts wherever they may lead</p>	<p style="text-align: right;">Page 9</p> <p>1 Opening remarks - Chen 2 us as we undertake our investigation, which 3 goes well beyond the public portion of our 4 work. 5 Before I pass the microphone to Jim, I 6 also want to thank the EDA for its robust 7 cooperation. Our outside counsel has been 8 diligent, helpful and timely in addressing 9 their many requests for documents and 10 information. And the EDA's staff has been 11 very helpful to us and candid with us in 12 those efforts. 13 Although our work does require us to 14 examine its past practices, we are heartened 15 by their recognition of room for 16 improvement and by the professional dedication 17 of their employees. 18 With that introduction, I would like 19 to call on Jim Walden to describe the 20 testimony we plan to elicit at today's 21 hearing. 22 MR. WALDEN: Thank you very much, 23 Professor Chen, and I just want to say thank 24 you to a great team that's been working 25 really, really hard all together.</p>

<p style="text-align: right;">Page 10</p> <p>1 Opening remarks - Walden</p> <p>2 So at the first hearing, I emphasized</p> <p>3 the critical importance of people coming</p> <p>4 forward to disclose wrongdoing and, as you</p> <p>5 alluded to a couple of moments ago, many</p> <p>6 people have heeded that request. Some have</p> <p>7 disclosed, in large ways and small, evidence</p> <p>8 of potential corruption and self-dealing and</p> <p>9 arguable illegal activity.</p> <p>10 Now, I caveat those statements with</p> <p>11 the words "potential" and "arguable" because</p> <p>12 at the end of the day we do not intend to</p> <p>13 base any conclusions that Prof. Chen will</p> <p>14 make based only on confidential sources,</p> <p>15 although they are a critical first step in</p> <p>16 finding other evidence of substantiated</p> <p>17 claims.</p> <p>18 So I suspect today that we're going to</p> <p>19 hear about a number of different topics. As</p> <p>20 in the last hearing, will hear from a</p> <p>21 whistleblower about alleged misconduct</p> <p>22 within one company, and I have a caveat</p> <p>23 about that in a moment. But we will also</p> <p>24 hear from some current and some former EDA</p> <p>25 employees, and we plan with these witnesses</p>	<p style="text-align: right;">Page 11</p> <p>1 Opening remarks - Walden</p> <p>2 to focus on a couple of things; but in</p> <p>3 particular, on one topic that is both</p> <p>4 important and granular, and so I apologize</p> <p>5 in advance that what I'm about to say is</p> <p>6 going to get a little wonky, but you can't</p> <p>7 really talk about tax incentives without</p> <p>8 getting wonky at some point.</p> <p>9 So for businesses desiring tax</p> <p>10 incentives, one object of this program that</p> <p>11 is referred to as Grow New Jersey was to</p> <p>12 protect jobs in New Jersey that were at risk</p> <p>13 of leaving the state.</p> <p>14 Now, whether program applicants</p> <p>15 actually retained the jobs that they</p> <p>16 promised is not going to be a subject of</p> <p>17 today's hearing, but will be a subject of</p> <p>18 another hearing later on. But for companies</p> <p>19 with projects all over the state, the</p> <p>20 statute and the implemented regulation seem</p> <p>21 abundantly clear that, if you are going to</p> <p>22 retain jobs in the state, you must show that</p> <p>23 you're actually considering a location out</p> <p>24 of the state, meaning that you have an</p> <p>25 out-of-state location that is bona fide,</p>
<p style="text-align: right;">Page 12</p> <p>1 Opening remarks - Walden</p> <p>2 suitable, and available for your business.</p> <p>3 And we're going to hear from one witness</p> <p>4 today who is going to talk about the extent</p> <p>5 of diligence that a company needs to do in</p> <p>6 order to show that a location was those</p> <p>7 three things; available, suitable and bona</p> <p>8 fide.</p> <p>9 Now, there is one wrinkle and one</p> <p>10 nuance when it comes to jobs that were,</p> <p>11 before the Grow allegations in New Jersey,</p> <p>12 but they were moving specifically to Camden.</p> <p>13 And it's that wrinkle that we're going to</p> <p>14 explore in some detail through two of the</p> <p>15 witnesses today.</p> <p>16 Now, this is an important issue,</p> <p>17 right? For jobs that are already in New</p> <p>18 Jersey and then moving to Camden do have to</p> <p>19 prove that there is an out-of-state</p> <p>20 location. But what we found is, there's</p> <p>21 evidence of two schools of thought within</p> <p>22 the EDA itself on this, and those</p> <p>23 perspectives may not have been well known</p> <p>24 throughout the organization.</p> <p>25 First, some of the people that we've</p>	<p style="text-align: right;">Page 13</p> <p>1 Opening remarks - Walden</p> <p>2 interviewed, and you're going to hear from</p> <p>3 one of them today, have said that as the</p> <p>4 program was administered by the EDA, that</p> <p>5 EOA 2013 required every applicant, including</p> <p>6 those moving jobs to Camden from another</p> <p>7 city in New Jersey, to demonstrate that the</p> <p>8 jobs were at risk of leaving the state.</p> <p>9 They couldn't get tax credits if they didn't</p> <p>10 prove that. So according to this view, if</p> <p>11 the applicant didn't show a location that</p> <p>12 was bona fide, suitable and available, they</p> <p>13 may not qualify for tax credits.</p> <p>14 Others within the EDA, however, and</p> <p>15 you'll hear from one of those people today</p> <p>16 as well, believe that applicants promising</p> <p>17 to move jobs from another location in New</p> <p>18 York to Camden were not actually required by</p> <p>19 the statute to show that they were</p> <p>20 considering a location out of state. It was</p> <p>21 just, to move to Camden was enough.</p> <p>22 Those same witnesses, though, seem to</p> <p>23 suggest that there may not be a practical</p> <p>24 difference because of something that's</p> <p>25 called the net benefit test. And under this</p>

<p style="text-align: right;">Page 14</p> <p>1 Opening remarks - Walden</p> <p>2 things called the net benefit test, and I'll</p> <p>3 try not to get too wonky here, basically the</p> <p>4 statute required a showing that you only get</p> <p>5 the money if the application over the years</p> <p>6 is a net benefit to the state. And under</p> <p>7 that test, if you're moving jobs from, say,</p> <p>8 Jersey City to Camden, it's a statewide</p> <p>9 test. So there's no net benefit to that</p> <p>10 move from the perspective of the statute,</p> <p>11 and therefore, you'd get a much lower award.</p> <p>12 So to be clear, in-state move means no</p> <p>13 net benefit to the job transfer, and so the</p> <p>14 head count associated with that would get</p> <p>15 reduced from any award that you get and that</p> <p>16 could be very significant.</p> <p>17 Now, for what it's worth, on that last</p> <p>18 point about the net benefit test, we have</p> <p>19 found some evidence that at least one</p> <p>20 important consultant who handled many</p> <p>21 applications was giving the same advice to</p> <p>22 program applicants. They had the same</p> <p>23 understanding that if you're moving jobs</p> <p>24 within the state, you don't get any money</p> <p>25 for those jobs. You don't get credit for</p>	<p style="text-align: right;">Page 15</p> <p>1 Opening remarks - Walden</p> <p>2 those retained jobs, and this memo is from a</p> <p>3 very reputable company called Biggins Lacy</p> <p>4 Shapiro & Company. It's dated February 25,</p> <p>5 2015, and this is one part of what I'm going</p> <p>6 to say, so I apologize for it, but I think</p> <p>7 it's important that the record reflect this</p> <p>8 because it is some objective indicator</p> <p>9 whether or not the statute required a</p> <p>10 showing of an out-of-state location.</p> <p>11 For those companies that said they</p> <p>12 were considering a location out of state, it</p> <p>13 was really material. It was a material</p> <p>14 representation because it impacted the</p> <p>15 dollars in significant ways, so let me read</p> <p>16 this language.</p> <p>17 "The most important source of such net</p> <p>18 benefit is the stimulus resulting from the</p> <p>19 payroll associated with the jobs based on</p> <p>20 the proposed project site. As the net</p> <p>21 benefit analysis is intended to measure the</p> <p>22 incremental new revenue generated by the</p> <p>23 project, the state includes the payroll</p> <p>24 associated with net new jobs created in the</p> <p>25 state. If applicable" -- the relevant</p>
<p style="text-align: right;">Page 16</p> <p>1 Opening remarks - Walden</p> <p>2 part -- "the state will also include people</p> <p>3 from existing New Jersey jobs, but only if</p> <p>4 the company can demonstrate that existing</p> <p>5 jobs are at risk of leaving the state; i.e.,</p> <p>6 retaining jobs that otherwise would have</p> <p>7 left the state as supported by comparable</p> <p>8 economic and fiscal impact as creating new</p> <p>9 jobs."</p> <p>10 So why does all this matter? First of</p> <p>11 all, qualifying and disqualifying</p> <p>12 requirements of a multi-billion-dollar tax</p> <p>13 program should be clear, and it should be</p> <p>14 clear so that they can properly be</p> <p>15 understood by businesses and enforced by</p> <p>16 whatever authority is responsible for</p> <p>17 vetting the applications and enforcing the</p> <p>18 rules; and second, if there was an ambiguity</p> <p>19 in the statute -- and by the way, we're not</p> <p>20 taking a position on that, we don't</p> <p>21 necessarily agree that the statute is</p> <p>22 ambiguous on this -- the EDA as the</p> <p>23 administering agency really should have one</p> <p>24 interpretation, not two.</p> <p>25 Now, we cannot explain why people</p>	<p style="text-align: right;">Page 17</p> <p>1 Opening remarks - Walden</p> <p>2 working within the EDA had differing</p> <p>3 perspectives on program requirements</p> <p>4 concerning this issue of jobs moving within</p> <p>5 the state but to Camden; but either way, our</p> <p>6 investigation is clear to me based on the</p> <p>7 available evidence that, other than one</p> <p>8 exception that I'll explain in a moment,</p> <p>9 every single applicant promising to move</p> <p>10 jobs from within New Jersey to Camden</p> <p>11 actually certified that they were</p> <p>12 considering an out-of-state location anyway.</p> <p>13 And the one exception was a company that</p> <p>14 said they were going to eliminate the jobs</p> <p>15 entirely, and that qualifies under a</p> <p>16 different part of the statute.</p> <p>17 So put it another way: For any</p> <p>18 company seeking to retain jobs in New Jersey</p> <p>19 that was going to eliminate those jobs,</p> <p>20 every single application included an</p> <p>21 out-of-state location to show that those</p> <p>22 jobs were at risk of leaving the state.</p> <p>23 Obviously, these applications are</p> <p>24 submitted under penalties under the statute.</p> <p>25 If there is a representation that was made</p>

<p style="text-align: right;">Page 18</p> <p>1 Opening remarks - Walden 2 in the applications and it turns out that 3 that representation was false, the grants 4 are subject to suspension, termination, and 5 recapture and there's a potential of 6 criminal enforcement. 7 Now, I don't want to make too much of 8 this. We're at a very early stage of our 9 proceedings, and I'm not suggesting that 10 will happen. But I do think it's important 11 for people that are going to apply to the 12 program that they understand the law on this 13 area a little bit and for that purpose, I'd 14 like to turn to Pablo Quinones. 15 MR. QUINONES: Thank you, Jim, thank 16 you Prof. Chen. I don't want to make too 17 much of this point, but as a criminal law 18 practitioner, both as a professor and 19 attorney in this area, I do think it's worth 20 making plain to the public that there is 21 real criminal exposure for companies that 22 lie to the EDA, thereby depriving New Jersey 23 of tax revenue. 24 Several cases applying federal mail 25 and wire fraud statutes help me explain my</p>	<p style="text-align: right;">Page 19</p> <p>1 Opening remarks - Quinones 2 point. Federal law makes it a crime for 3 anyone to use mail or interstate wires to 4 devise a scheme to defraud, to obtain money 5 or property by false or fraudulent 6 representations. Title 18, United States 7 Code Section 1341 is the mail fraud statute; 8 Section 1343 is the wire fraud statute. 9 Now, the Supreme Court has addressed 10 taxes in this particular context. In a case 11 called Pasquantino vs. United States, the 12 court held that the right to collect taxes 13 is, money or property, protected by the mail 14 or wire fraud statutes; and the court found 15 that tax evasion inflicts an economic injury 16 no less than embezzling funds from the 17 government's Treasury. 18 New Jersey federal cases have followed 19 this approach; for example, the Third 20 Circuit in a case called U.S. vs. Yusuf 21 found that unpaid taxes which are unlawfully 22 retained by mailing fraudulent tax returns 23 that conceal the amount of tax revenue due 24 may be considered criminal proceeds subject 25 to the federal money laundering laws.</p>
<p style="text-align: right;">Page 20</p> <p>1 Opening remarks - Quinones 2 Finally, in August of 2018, a case 3 from the U.S. Court of Appeals makes the 4 point more than clearly in connection with 5 tax revenue. In Hoffman, the court upheld a 6 fraud conviction that involved defendants 7 who had schemed to get Louisiana tax credits 8 by submitting false documents to the state. 9 The court found that tax credits reduce the 10 dollars otherwise owed to the state, and 11 lying to obtain them has the same effect as 12 lying to evade taxes. The state collects 13 less money. 14 In sum, companies that lie to obtain 15 tax breaks from New Jersey have hurt New 16 Jersey's economy, potentially committed a 17 serious crime. With that, I'd like to 18 return the floor to Jim. 19 MR. WALDEN: Thank you, Pablo. So 20 just to underscore this point, first of all, 21 for anyone who wants it there is a handout 22 here on this table that has a list, and this 23 is all publicly available information that 24 lists every company that has -- there are 31 25 companies that I mentioned before, companies</p>	<p style="text-align: right;">Page 21</p> <p>1 Opening remarks - Walden 2 that, thirty of them were moving jobs in 3 state to Camden, one of them was planning to 4 eliminate jobs before the tax credits. 5 But to underscore Pablo's point, we 6 very carefully looked at the EDA board 7 approval memos, which is what is submitted 8 to the EDA board when a vote is being 9 requested of the board members to award 10 these tax credits. 11 And as you all know, I'm sure, at this 12 point, the amount of dollars is considerable 13 and, for the jobs moving to Camden, we're 14 talking about over a billion dollars. But 15 you'll see in the handout that, in each and 16 every circumstance, for every single one of 17 these board memos, there is a statement in 18 the board memo that says words to the effect 19 that these jobs were at risk of leaving the 20 state and on that basis the board is asked 21 to approve. 22 So that just underscores the point of 23 it. This is clearly a material 24 representation. The EDA viewed it as 25 material, they included it in the board</p>

<p style="text-align: right;">Page 22</p> <p>1 Opening remarks - Walden</p> <p>2 memos, and the board relied on those</p> <p>3 assertions in awarding the tax credit that</p> <p>4 they did.</p> <p>5 And understand as well that these</p> <p>6 weren't just simple representations by the</p> <p>7 company. As the program was being</p> <p>8 administered, the EDA required some proof</p> <p>9 that the company had identified an</p> <p>10 out-of-state location that was bona fide,</p> <p>11 suitable and available, and we're going to</p> <p>12 hear a little bit about that today.</p> <p>13 And in doing that, we're going to take</p> <p>14 a look at four applications where companies</p> <p>15 claimed to have an out-of-state location to</p> <p>16 demonstrate that jobs were at risk, and I</p> <p>17 want us all to be very, very careful about</p> <p>18 how we consider this evidence.</p> <p>19 EO 52 requires us to do some of our</p> <p>20 factfinding in public so there's no choice</p> <p>21 about that. And we're going to be as</p> <p>22 responsible and careful and moderate as one</p> <p>23 can imagine in doing it. So understand</p> <p>24 we're going to put before you factual</p> <p>25 information. We are not drawing any</p>	<p style="text-align: right;">Page 23</p> <p>1 Opening remarks - Walden</p> <p>2 conclusions today. We are not directly or</p> <p>3 indirectly insinuating that anyone broke the</p> <p>4 law.</p> <p>5 What we're trying to do is figure out</p> <p>6 the level of diligence that was applied to</p> <p>7 these and that's what you're going to hear</p> <p>8 today.</p> <p>9 You're going to hear essentially an</p> <p>10 expert witness from the EDA who oversees</p> <p>11 this group of people that's called the</p> <p>12 underwriters. And they are the ones that</p> <p>13 are the primary group of people that vet the</p> <p>14 applications.</p> <p>15 And so he's reviewed files that he did</p> <p>16 not work on at the time, and we're going to</p> <p>17 put factual information into the record.</p> <p>18 He's going to give his perspective on</p> <p>19 whether or not more questions should have</p> <p>20 been asked, and then we're going to move on.</p> <p>21 It very well may be that when we talk</p> <p>22 to the companies about these, they will have</p> <p>23 additional information that allays any</p> <p>24 concern. But again, the point here is not</p> <p>25 so much about what the company did or didn't</p>
<p style="text-align: right;">Page 24</p> <p>1 Opening remarks - Walden</p> <p>2 do, but the EDA management and vetting of</p> <p>3 these applications, which is where we're</p> <p>4 trying to focus.</p> <p>5 Okay. So with all that being said,</p> <p>6 let me just talk about the lineup here.</p> <p>7 At a high level, as you've heard in</p> <p>8 the first day of our proceedings, there was</p> <p>9 whistleblower, and the whistleblower filed a</p> <p>10 lawsuit and that lawsuit had a number of</p> <p>11 different allegations. And again, caution</p> <p>12 here, right? We want to be careful. We're</p> <p>13 not saying the whistleblower was telling the</p> <p>14 truth or not. In a sense, it's not</p> <p>15 relevant.</p> <p>16 What's relevant is that there were</p> <p>17 very specific allegations that were made</p> <p>18 about misconduct concerning specific awards,</p> <p>19 and that was something that could be</p> <p>20 investigated. And whether it turned out</p> <p>21 that that investigation yielded information</p> <p>22 that corroborated or undercut the</p> <p>23 allegations for any organization, will learn</p> <p>24 from any experience, and it was an</p> <p>25 opportunity for the EDA to increase its</p>	<p style="text-align: right;">Page 25</p> <p>1 Opening remarks - Walden</p> <p>2 level of scrutiny, particularly over this</p> <p>3 idea of phantom locations, and require</p> <p>4 additional diligence, and articulate some</p> <p>5 clear rules about what companies, what</p> <p>6 business records company had to submit, in</p> <p>7 addition to a draft lease or a lease</p> <p>8 proposal for the out-of-state location.</p> <p>9 So that's, by way of broad context.</p> <p>10 What we're going to get to today. We're</p> <p>11 also going to hear from a witness who was</p> <p>12 aware of the way in which the legislation</p> <p>13 came to be, and the various individuals that</p> <p>14 were involved in that legislation. And</p> <p>15 whoever else was involved in it, we're</p> <p>16 really going to focus on the involvement of</p> <p>17 one specific individual at a firm called</p> <p>18 Parker McCay. So that's broadly what you're</p> <p>19 going to hear today. The way we are going</p> <p>20 to frame that is at follows:</p> <p>21 First, we're going to start off with</p> <p>22 my colleague, Jen Prevete. For those of you</p> <p>23 who did not follow this whistleblower case</p> <p>24 that actually went to trial, Jen's going to</p> <p>25 just give people a high-level presentation</p>

1 Opening remarks - Walden
2 of the case, how it was resolved, and what
3 the key allegations were. Again, we have
4 not yet investigated those things ourselves,
5 given the focus that we had on these, based
6 on confidential sources; and so for that
7 reason she's not going to mention the names
8 of the companies that were the subject of
9 the allegations, she's just going to
10 describe the applications, so Jen Prevete is
11 first.

12 Then we're going to hear from Fred
13 Cole, and for those who were at the first
14 day of our proceedings, you remember
15 Mr. Cole's name. Mr. Cole was actually
16 deposed during, as the case was brought by a
17 man named David Sucsuz. Mr. Cole was
18 deposed. Mr. Cole actually had been the
19 person that originally investigated his
20 discrimination case where he made the claims
21 of misconduct in that lawsuit, and
22 ultimately, that lawsuit was going on when
23 the comptroller started his audit at
24 Governor Murphy's direction back in January
25 of 2018, and you will recall that there was

1 Opening remarks - Walden
2 a specific letter that Cole signed
3 indicating that there was no litigation
4 where former employees were accusing the EDA
5 of any sort of misconduct or fraud.

6 And Mr. Cole certified that that
7 didn't -- there wasn't one, even though the
8 lawsuit of those allegations was pending at
9 the time. So the comptroller, as you
10 remember, testified that he had no idea
11 about this lawsuit during the course of his
12 audit. We're going to hear from Mr. Cole
13 and get the explanation as to why that
14 happened.

15 Next we're going to hear from a man
16 named John Boyd, who is at a company called
17 The Boyd Company, a corporate site selection
18 firm based in Princeton, New Jersey. And
19 Mr. Boyd will explain the procedures,
20 processes and analysis that companies
21 typically use when making important
22 decisions of whether to relocate, and where
23 to relocate their offices or facilities and
24 the seriousness with which they make that
25 decision.

1 Opening remarks - Walden
2 Next we will here in a man named David
3 Lawyer, who is an EDA employee. He's
4 actually the manager of the underwriting
5 section. As I said before, he only became a
6 manager of the underwriting section in May
7 of 2017, so for the period where at least
8 we're focusing right now, and everybody
9 understands, I'm sure, that in the nature of
10 our work, we're focusing right now on the
11 issues that we're talking to you about today
12 behind the scenes. We're focusing on a much
13 broader picture and, as we get farther along
14 with our work, we'll bring more information
15 forward.

16 But I suspect that Mr. Lawyer is going
17 to be a very clear witness who is going to
18 describe the process through which the EDA
19 vets the applications or the way that it was
20 administered in the period of June 2013 to
21 2017; he's going to talk about the specific
22 issue of out-of-state locations, he's going
23 to talk about the considerations that go
24 into asking additional questions, and he's
25 going to review, as I said before, four

1 Opening remarks - Walden
2 applications that he did not work on, and
3 guide us through what the process looked
4 like based on a review of the file.

5 And the files are very complicated.
6 We're not going to be able to go through all
7 the documents, but he's gone through the
8 files and we're going to give you an
9 overview of his conclusions concerning those
10 applications.

11 Now, you saw me there being distracted
12 for a second and I made a mistake. It won't
13 be the last time you'll see me make a
14 mistake, but there's another witness that I
15 didn't put in the order that is -- sorry,
16 either before or after Mr. Cole, and that's
17 the whistleblower that I referred to before.
18 Her name is Kerrie-Ann Murray.

19 Again, because we have not
20 investigated her claims, and because the
21 company very vividly denies them and they
22 believe they have data, we don't have it
23 yet, but they believe they have data showing
24 that her allegations are not correct, we're
25 going to have her not identify her former

<p style="text-align: right;">Page 30</p> <p>1 Opening remarks - Walden</p> <p>2 employer, and I ask everyone to understand</p> <p>3 this is not a trial, as Chairman Chen said.</p> <p>4 We're here under the Executive Order to make</p> <p>5 information that's brought forth in</p> <p>6 testimony, not to draw conclusions about it.</p> <p>7 And in fairness to everyone, when we</p> <p>8 present information, if we find later on</p> <p>9 that there's additional information that</p> <p>10 casts doubt on the credibility of some</p> <p>11 evidence that we've elicited, we'll either</p> <p>12 notify the public or call witnesses to the</p> <p>13 stand. So we'll hear from Ms. Murray.</p> <p>14 Okay. So after David Lawyer, we're</p> <p>15 then going to hear from the former CEO of</p> <p>16 the EDA, a man named Tim Lizura. And we</p> <p>17 will ask Mr. Lizura about the role that EDA</p> <p>18 played in drafting the legislation that was</p> <p>19 created in 2013, and we're going to ask him</p> <p>20 about a draft, that's a pretty specific</p> <p>21 draft. That was a draft that was created</p> <p>22 and sent to him after the assembly had</p> <p>23 already passed its version of the statute,</p> <p>24 and as the Senate was considering what</p> <p>25 changes to make.</p>	<p style="text-align: right;">Page 31</p> <p>1 Opening remarks - Walden</p> <p>2 So we're going to ask some very</p> <p>3 detailed questions about that version of the</p> <p>4 bill and how certain of the amendments were</p> <p>5 added, and by whom, and what his</p> <p>6 understanding -- Mr. Lizura is, I think that</p> <p>7 you will conclude, a very experienced and</p> <p>8 knowledgeable policy expert on tax</p> <p>9 incentives. He's been doing this, or</p> <p>10 versions of this, throughout much of his</p> <p>11 career. We're going to ask him about what</p> <p>12 policy was behind some of these changes,</p> <p>13 whether he agreed or disagreed with it, and</p> <p>14 we hope to get his perspective.</p> <p>15 And then finally we're going to hear</p> <p>16 from Brandon McCoy of the Center on Budget</p> <p>17 and Policy, and he's going to offer us his</p> <p>18 perspectives on the involvement of a private</p> <p>19 law firm representing clients in the</p> <p>20 legislative process, the way in which that</p> <p>21 bill was created in this specific instance</p> <p>22 with respect to the Economic Opportunity Act</p> <p>23 of 2013.</p> <p>24 And so as you can see, we're going to</p> <p>25 try to keep breaks to a minimum today</p>
<p style="text-align: right;">Page 32</p> <p>1 Presentation - Prevete</p> <p>2 because it will take quite a bit of effort</p> <p>3 for us to stay focused enough to be able to</p> <p>4 get through all of these witnesses between</p> <p>5 now and 5 o'clock, which is our closing.</p> <p>6 Okay. So thank you and I'll return</p> <p>7 the proceedings to the chair.</p> <p>8 PROF. CHEN: I think, as Mr. Walden</p> <p>9 said, the first -- the next item will be the</p> <p>10 presentation of Ms. Prevete.</p> <p>11 MS. PREVETE: Thank you, Professor</p> <p>12 Chen. I would like to introduce this</p> <p>13 presentation into the record as Task Force</p> <p>14 Exhibit 2.</p> <p>15 REC'D (Task Force Exhibit 2,</p> <p>16 presentation re Sucsuz litigation, received</p> <p>17 in evidence, as of this date.)</p> <p>18 MS. PREVETE: As you heard and saw in</p> <p>19 the first day of this hearing, and as</p> <p>20 Prof. Chen just mentioned, whistleblowers</p> <p>21 play an integral role in the investigative</p> <p>22 process. For those of you who are who were</p> <p>23 not present at the first day of the Task</p> <p>24 Force's hearing, we showed a brief timeline</p> <p>25 of a whistleblower complaint that had been</p>	<p style="text-align: right;">Page 33</p> <p>1 Presentation - Prevete</p> <p>2 launched by a former EDA employee. Today I</p> <p>3 will be working through some of those</p> <p>4 whistleblower allegations made by this</p> <p>5 former EDA employee who had worked on the</p> <p>6 tax incentive program that's the focus of</p> <p>7 the Task Force's inquiry.</p> <p>8 This whistleblower, David Sucsuz,</p> <p>9 alleged that he had witnessed misconduct in</p> <p>10 connection with incentive program approvals,</p> <p>11 and recited that he resisted directives from</p> <p>12 senior management to alter or promote</p> <p>13 applications that should have otherwise been</p> <p>14 rejected.</p> <p>15 The information described in this</p> <p>16 presentation consists of what we know from</p> <p>17 Mr. Sucsuz's lawsuit, and we emphasize that</p> <p>18 they remain allegations at this time.</p> <p>19 To provide some background about</p> <p>20 Mr. Sucsuz, he was an employee with the EDA</p> <p>21 for over ten years. He started as a legal</p> <p>22 assistant in the lending services division,</p> <p>23 and then became a finance officer with the</p> <p>24 EDA's bond and incentives division. After</p> <p>25 that, his title changed to underwriter. As</p>

<p style="text-align: right;">Page 34</p> <p>1 Presentation - Prevete 2 a finance officer, and later as an 3 underwriter, Mr. Sucsuz's primary 4 responsibilities including reviewing 5 applications submitted to the EDA under its 6 various funding and incentive programs, 7 drafting project summaries for those 8 applications and presenting the applications 9 at project review meetings and incentive 10 committee meetings. 11 In the context of a lawsuit, 12 Mr. Sucsuz certified under oath that he was 13 also responsible for understanding the 14 provisions of the applicable program statute 15 and regulations that governed the funding 16 and incentive program, and was responsible 17 for ensuring that program applicants met the 18 qualifications required by law. 19 Mr. Sucsuz filed an internal complaint 20 with the EDA on May 21, 2014. He was 21 terminated on September 24th, 2014. 22 Mr. Sucsuz filed his lawsuit on May 23 11, 2015 in New Jersey Superior Court, 24 Mercer County, against the New Jersey 25 Economic Development Authority and several</p>	<p style="text-align: right;">Page 35</p> <p>1 Presentation - Prevete 2 EDA employees. He alleged discrimination 3 and unlawful termination based on violation 4 of New Jersey's Conscientious Employee 5 Protection Act, and based on discrimination. 6 In addition to his claims of unlawful 7 termination and discrimination, Mr. Sucsuz 8 alleged various violations of EDA policies, 9 regulations and statutory requirements in 10 connection with EDA tax incentives and 11 finance programs. 12 As we reviewed on the first day of our 13 proceeding, after Mr. Sucsuz filed his 14 complaint, various senior leadership team 15 members of the EDA as well as Mr. Sucsuz 16 were deposed in 2017 and early 2018. The 17 last of these depositions took place on 18 January 26, 2018. 19 The case ultimately went to a jury 20 trial which started on April 30th, 2018, and 21 lasted eight days. The jury announced its 22 verdict on May 10th. And while Mr. Sucsuz 23 did not ultimately succeed on his 24 retaliation claim, the jury unanimously 25 found that he had proven his whistleblower</p>
<p style="text-align: right;">Page 36</p> <p>1 Presentation - Prevete 2 allegation by a preponderance of the 3 evidence with respect to his claim under the 4 New Jersey Conscientious Employee Protection 5 Act. 6 In connection with that finding, the 7 jury concluded six to zero that Mr. Sucsuz 8 had proven by a preponderance of the 9 evidence that he had a reasonable belief 10 that the New Jersey Economic Development 11 Authority had violated a law, rule or 12 regulation in the processing of applications 13 for loan grants and tax incentives. 14 Mr. Sucsuz alleged that during his 15 tenure as an underwriter in the bond and 16 incentives division of the EDA between 17 September 2011 and September 2014, members 18 of the EDA management team had instructed 19 him to falsify various grants and tax 20 incentive applications in violation of rules 21 and regulations for grants and tax incentive 22 funding. I will now walk you through some 23 of Mr. Sucsuz's allegations of misconduct 24 related to the administration of the tax 25 incentive program.</p>	<p style="text-align: right;">Page 37</p> <p>1 Presentation - Prevete 2 These include allegations of companies 3 providing phantom alternative locations, 4 allegations of manipulated cost inputs, and 5 allegations of falsified job figures. I 6 will also briefly describe some of 7 Mr. Sucsuz's allegations and some of the 8 testimony related to external pressures on 9 EDA employees. 10 Mr. Sucsuz alleged that the EDA 11 required applicants to demonstrate that the 12 alternative and competing out-of-state 13 locations are legitimate and comparable to 14 the New Jersey site as part of the material 15 factor requirement for certain of the tax 16 incentive programs. It is a requirement of 17 the Grow New Jersey grant that an applicant 18 is deciding between a legitimate alternative 19 location and the New Jersey location that 20 the company seeks to be the subject of the 21 grow NJ grant. 22 Mr. Sucsuz alleged that in connection 23 with this requirement, he notified EDA 24 management that the competing out-of-state 25 locations just were not real. He further</p>

<p style="text-align: right;">Page 38</p> <p>1 Presentation - Prevete 2 alleged senior management took no action in 3 response to his concerns, and the 4 application of companies with apparently 5 phantom alternative locations were approved 6 anyway. 7 Mr. Sucsuz gave several examples of 8 specific project applications that allegedly 9 involved what he referred to as the phantom 10 locations. For company A, Mr. Sucsuz 11 testified that one applicant's proposed 12 alternate locations appeared not to be real 13 because it was provided after the EDA had 14 asked for it, and it didn't seem to be 15 comparable to the location in New Jersey in 16 numerous ways, including differences with 17 the site's dimensions and certain issues 18 with accessibility, which was relevant 19 because the management of the company would 20 be traveling to the location. 21 Mr. Sucsuz testified that another 22 company seemed to be relying on a phantom 23 alternative location because it had already 24 moved into a New Jersey location and was 25 even hiring for this new site prior to</p>	<p style="text-align: right;">Page 39</p> <p>1 Presentation - Prevete 2 submitting an application for a Grow NJ tax 3 incentive grant. Mr. Sucsuz further 4 testified that the alternate location 5 provided was at a site where the company 6 already had offices. He alleged that he 7 reported his concerns to EDA management but 8 that nobody took any action. 9 With respect to a third application, 10 Mr. Sucsuz testified that the applicant was 11 already in New Jersey but wanted to move to 12 a different part of the state. The company 13 identified an alternate location in North or 14 South Carolina. Mr. Sucsuz testified that 15 because he could not conduct a site visit, 16 he tried to find the alternate location 17 through Google Maps but was unable to do so 18 based on the information provided by the 19 applicant. 20 When he raised this issue to his 21 supervisor, he was told that since the 22 applicant was a furniture company, he only 23 needed to know that North and South Carolina 24 were popular for furniture companies. 25 Mr. Sucsuz testified that another</p>
<p style="text-align: right;">Page 40</p> <p>1 Presentation - Prevete 2 applicant had initially mentioned an 3 alternate location in New York, but was 4 unable to provide an address for that 5 location, and then claimed to have a second 6 alternate location in Pennsylvania. He 7 further testified that when the applicant 8 submitted his application, he provided a 9 city as the alternate location but was 10 unable to provide a specific address. 11 Ultimately, after several requests, the 12 company provided more information about this 13 alternative, but only after the application 14 had been submitted. 15 Mr. Sucsuz suspected that the 16 alternate location was fabricated for 17 purposes of the application. Mr. Sucsuz 18 also testified that it took much effort to 19 obtain the information regarding the 20 alternate location address and terms sheet, 21 noting that this was a teeth-pulling 22 exercise. 23 Mr. Sucsuz further testified that 24 another applicant provided a Pennsylvania 25 location as part of its alternatives. He</p>	<p style="text-align: right;">Page 41</p> <p>1 Presentation - Prevete 2 testified, however, that the first proposed 3 alternate location was not suitable because 4 it did not fit the company's description and 5 need. The company then proposed a 6 build-to-suit location but did not provide 7 any construction contracts or other 8 indicators. 9 Thus, upon review of the second 10 alternate location, Mr. Sucsuz determined 11 that the alternate location was not suitable 12 because the company would have to complete 13 its personalized build-out in Pennsylvania 14 within a year, which seemed unlikely. 15 Furthermore, Mr. Sucsuz testified that the 16 company had already indicated its intention 17 to expand in New Jersey. This application 18 was also approved. 19 Mr. Sucsuz testified that in another 20 instance, an application lacked a material 21 factor showing because of a phantom 22 alternate site. He testified that the 23 applicant failed to provide an alternate 24 location at first, and while they ultimately 25 did provide an out-of-state location, he</p>

<p style="text-align: right;">Page 42</p> <p>1 Presentation - Prevete</p> <p>2 could not verify its existence, and</p> <p>3 understood that they had already decided to</p> <p>4 move to a location within New Jersey.</p> <p>5 Mr. Sucsuz's supervisor testified that</p> <p>6 the application included some odds and ends</p> <p>7 that made it seem as though the company</p> <p>8 might have committed to New Jersey already.</p> <p>9 Mr. Sucsuz's supervisor, along with others</p> <p>10 in EDA management, visited this company's</p> <p>11 offices for due diligence purposes, and his</p> <p>12 supervisor concluded that the company had</p> <p>13 already committed to staying in New Jersey.</p> <p>14 Nevertheless, the company's Grow</p> <p>15 application was approved and although this</p> <p>16 company ultimately withdrew from the program</p> <p>17 and did not receive a tax credit,</p> <p>18 Mr. Sucsuz's supervisor testified at a</p> <p>19 deposition that it was an inadvertent</p> <p>20 slip-up that the application was approved.</p> <p>21 Mr. Sucsuz alleged that there were</p> <p>22 other ways that applicants manipulated their</p> <p>23 applications that EDA had overlooked. He</p> <p>24 testified that he was directed to alter or</p> <p>25 manipulate costs input through the</p>	<p style="text-align: right;">Page 43</p> <p>1 Presentation - Prevete</p> <p>2 cost/benefit or the net benefit test in</p> <p>3 order to qualify a company that would not</p> <p>4 have otherwise qualified under the cost</p> <p>5 input the company provided. When he refused</p> <p>6 to alter the cost input, Mr. Sucsuz's</p> <p>7 supervisor would do it himself.</p> <p>8 Mr. Sucsuz alleged that when the net</p> <p>9 benefit analysis showed little or no net</p> <p>10 benefit to New Jersey, his supervisor asked</p> <p>11 him to change the input to the calculations</p> <p>12 to make it show a benefit. When Mr. Sucsuz</p> <p>13 refused to do it, his supervisor would do</p> <p>14 this himself.</p> <p>15 Mr. Sucsuz testified that in other</p> <p>16 instances, companies falsified job figures</p> <p>17 to obtain Grow awards. A grants recipient's</p> <p>18 eligibility and award amount under the</p> <p>19 Grow NJ program is based in part on the</p> <p>20 number of jobs created; thus, the more jobs</p> <p>21 that are created, the greater potential tax</p> <p>22 incentive grant.</p> <p>23 In one example, Mr. Sucsuz testified</p> <p>24 that he objected to an application because</p> <p>25 the company had very limited space for the</p>
<p style="text-align: right;">Page 44</p> <p>1 Presentation - Prevete</p> <p>2 number of employees for which they were</p> <p>3 trying to create jobs. Specifically,</p> <p>4 Mr. Sucsuz testified that one company</p> <p>5 indicated it would employ 150 employees at</p> <p>6 its new location in Camden. However, that</p> <p>7 location only had nine thousand square feet</p> <p>8 of working space when four or five times</p> <p>9 that square footage would have been required</p> <p>10 to accommodate that many employees.</p> <p>11 When confronted with this fact, the</p> <p>12 company indicated that it was running three</p> <p>13 eight-hour shifts at the site. Mr. Sucsuz</p> <p>14 testified that he objected to the</p> <p>15 application because advertising companies,</p> <p>16 like Company G, do not operate on a</p> <p>17 24-hour-per-day schedule. But his</p> <p>18 supervisor told him not to include that</p> <p>19 information in the project summary.</p> <p>20 Mr. Sucsuz alleged his supervisor directed</p> <p>21 him to change the project summary to reflect</p> <p>22 inaccurate information.</p> <p>23 Finally, in addition to his</p> <p>24 allegations about false or phantom</p> <p>25 locations, manipulated cost input, and</p>	<p style="text-align: right;">Page 45</p> <p>1 Presentation - Prevete</p> <p>2 falsified job figures, Mr. Sucsuz alleged</p> <p>3 that there were external pressures on EDA</p> <p>4 employees related to grant applicants.</p> <p>5 Mr. Sucsuz alleged that representatives from</p> <p>6 other public offices would call and inquire</p> <p>7 about certain applications regarding when</p> <p>8 they would be approved, and for what award</p> <p>9 size.</p> <p>10 Mr. Sucsuz also recalled hearing EDA</p> <p>11 senior management complaining of these</p> <p>12 public officials overstepping with the EDA</p> <p>13 and being too involved in the approval</p> <p>14 process. Other EDA witnesses, during the</p> <p>15 course of the litigation, similarly noted</p> <p>16 that there's always pressure from the</p> <p>17 outside.</p> <p>18 This concludes the Task Force's</p> <p>19 presentation regarding this whistleblower</p> <p>20 lawsuit.</p> <p>21 Thank you. Turn it back over to my</p> <p>22 colleague.</p> <p>23 PROF. CHEN: Thank you, Ms. Prevete.</p> <p>24 I have no further questions at this time.</p> <p>25 So the next, we will hear the testimony of</p>

1 Cole - examination/Levick
 2 Frederick Cole of the EDA, and that will be
 3 presented by Ms. Levick.
 4 F R E D E R I C K C O L E , having been first
 5 duly sworn, was examined and testified as
 6 follows:
 7 EXAMINATION BY
 8 MS. LEVICK:
 9 Q. Good morning, Mr. Cole. Thank you for
 10 joining us today.
 11 A. Good morning.
 12 Q. Could you please state and spell your
 13 name for the record.
 14 A. Yes, it's Frederick Cole.
 15 Q. And Mr. Cole, where do you currently
 16 work?
 17 A. I work at the NJEDA.
 18 Q. And what is your current role at the
 19 EDA?
 20 A. I'm a senior vice-president of
 21 operations. I'm essentially the business support.
 22 Q. And how long did you held that
 23 position?
 24 A. For about seven years.
 25 Q. So you've been in this role since

1 Cole - examination/Levick
 2 approximately 2012 or 13.
 3 A. Correct.
 4 Q. And how long have you been at the EDA?
 5 A. For approximately 24 years.
 6 Q. And have you been advised of your right
 7 have counsel at the EDA?
 8 A. Yes.
 9 Q. And are you, is your counsel here
 10 today?
 11 A. Yes.
 12 Q. And before I begin, I just want to make
 13 sure that you understand that you are here to tell
 14 the truth today.
 15 A. Yes.
 16 Q. And is there any reason that you are
 17 unable to provide truthful and accurate testimony
 18 today?
 19 A. No reason.
 20 Q. And so, we spoke on the phone the other
 21 day, is that correct?
 22 A. Yes.
 23 Q. And I never met you in person. And
 24 just for the record, I just also want to confirm
 25 that you met with two of my colleagues, Ms. Patel

1 Cole - examination/Levick
 2 and Mr. Williams, on April 12th?
 3 A. I did.
 4 Q. And did you provide truthful and
 5 accurate responses during both the telephone call
 6 that we had and the meeting that you had with my
 7 colleagues?
 8 A. Yes.
 9 Q. And so you are a senior vice-president
 10 of operations at the EDA, is that right?
 11 A. Correct.
 12 Q. Can you tell us a little bit about your
 13 responsibility in this role.
 14 A. Yes. Essentially, like I said
 15 earlier, it's a business support role, so I'm
 16 responsible for overseeing the back office
 17 operations of the authority, functions such as IT,
 18 HR, accounting and financial reporting, internal
 19 audit, procurement, and labor stats.
 20 Q. And in your role as a senior
 21 vice-president, do you have any role or
 22 responsibility in connection with the EDA tax
 23 incentive program?
 24 A. A minimal role.
 25 Q. But you at least have some awareness of

1 Cole - examination/Levick
 2 the tax incentive program even though you didn't
 3 personally work with them.
 4 A. Correct.
 5 Q. And so at some point at the EDA, did
 6 you also take on a role as an EEO officer, Equal
 7 Employment Opportunity officer?
 8 A. Yes.
 9 Q. And when was that?
 10 A. I believe that was concurrent with my
 11 promotion to senior vice-president in 2012.
 12 Q. All right. And can you please tell us
 13 a little bit about your role and responsibilities
 14 as an EEO officer.
 15 A. Essentially, the role is liaison
 16 responsibility with the State Civil Service
 17 Commission, where I work to ensure that the state
 18 law against discrimination is upheld, is
 19 protected, and that proper training occurs within
 20 our agency.
 21 Q. Great. And so was one of your
 22 responsibilities as the EEO officer to investigate
 23 allegations of discrimination by EDA employees?
 24 A. Yes.
 25 Q. And so in May 2014, did you receive a

1 Cole - examination/Levick
2 complaint alleging discrimination filed by an EDA
3 employment named base David Sucsuz?

4 A. I did.

5 Q. Did you review the allegations in his
6 complaint?

7 A. I did.

8 Q. Is it your recollection that he had
9 alleged that he had been discriminated against by a
10 supervisor?

11 A. That's correct.

12 Q. And did you investigate these claims?

13 A. I did.

14 Q. Did you do that alone or with others?

15 A. Alone.

16 Q. And what was the result of your
17 investigation?

18 A. My investigation found that there was
19 no nexus between any of the roughly 30 allegations
20 that were made and any violations of the state
21 policy against discrimination.

22 Q. And in or around September 2014, is it
23 your recollection that Mr. Sucsuz was terminated
24 from the EDA?

25 A. Correct.

1 Cole - examination/Levick

2 Q. And moving forward a year, after you
3 issued this final finding on the discrimination
4 claim, do you recall that Mr. Sucsuz filed a
5 lawsuit in New Jersey Superior Court?

6 A. Yes.

7 Q. And that was against the EDA and other
8 individuals at the EDA?

9 A. That's correct.

10 Q. And did you read the complaint?

11 A. I did.

12 Q. And in fact, you were one of the named
13 defendants as well.

14 A. Yes.

15 Q. And as part of the litigation, you were
16 also deposed over the course of two days?

17 A. That's correct.

18 Q. And that was in late October 2017?

19 A. I'm sorry, I didn't hear the end.

20 Q. 2017, in October 2017 --

21 A. Yes, that's correct.

22 Q. And so is it fair to say that you were
23 pretty involved in the litigation both as a
24 defendant and as a senior official at the EDA?

25 A. Yes.

1 Cole - examination/Levick

2 Q. So what, if any, reactions do you have
3 to the referenced allegations in this complaint?

4 A. I have to say personally, I was a
5 little bit shocked that not only did the Claimant
6 allege that he was fired because of retaliatory
7 measures, because of the EEO claim, but also
8 because there were new allegations that were
9 brought up that, prior to that time, I had never
10 seen or heard of.

11 Q. And so just to be clear for the record,
12 none of these new claims had been alleged in that
13 discrimination claim he filed in the year 2014.

14 A. That is correct.

15 Q. So part of the reason you were so
16 surprised is that these new claims now indicated
17 misconduct on behalf of both individuals of the EDA
18 and, potentially, applicants to the EDA program?

19 A. Yes.

20 Q. So had you ever seen any other
21 complaints like this in your 24 years at the EDA?

22 A. No, I haven't.

23 Q. And so is it fair to say that seeing
24 this particular complaint for the first time was
25 very memorable?

1 Cole - examination/Levick

2 A. Yes.

3 Q. I'm going to direct you to the binder
4 that is on the table in front of you. And if you
5 could turn to tab 3 --

6 MS. LEVICK: -- and I want to move
7 this document into the record as Task Force
8 Exhibit 3.

9 REC'D (Task Force Exhibit 3, binder
10 containing materials re Sucsuz complaint,
11 received in evidence, as of this date.)

12 Q. Do you recognize this document?

13 A. Yes.

14 Q. And does it appear to be a cover letter
15 attaching or including the Sucsuz complaint that
16 was filed in 2015?

17 A. Yes.

18 Q. Do you recognize the handwriting on
19 this document to be yours?

20 A. Yes.

21 Q. Could you please read the handwritten
22 notes that are in the corner there.

23 A. Okay. "Denying Sandy applicants,
24 prevailing wage, construction (bond), no
25 prevailing wage, one new job for tax-exempt debt.

1 Cole - examination/Levick
 2 Location costs, net benefits test, phantom
 3 locations bracket in/out to Susan Margie, film,
 4 less than 60 percent costs in New Jersey," and
 5 "Grow non-profits (excluded)."

6 Q. Thank you. Is it your understanding
 7 that these notes reference some of the eligibility
 8 requirements under the EDA tax incentive program?

9 A. Yes, some of the items do.

10 Q. And so is it your understanding that
 11 location costs and net benefit tests are potential
 12 considerations related to the company's eligibility
 13 for a tax incentive award?

14 A. Yes.

15 Q. And is it your understanding that
 16 phantom locations could potentially be a problem
 17 related to a company's eligibility for a tax
 18 incentive award?

19 A. Yes.

20 Q. So I would like to just walk through a
 21 couple of examples that Ms. Prevete has mentioned
 22 briefly that are alleged in Mr. Sucsuz's claims.

23 So if you could please turn to the
 24 following tab, Tab 4 --

25 MS. LEVICK: -- and I'm going to

1 Cole - examination/Levick
 2 introduce this into the record as Task Force
 3 Exhibit 4.

4 REC'D (Task Force Exhibit 4, complaint
 5 filed by Sucsuz in 5/15, tab 4 in binder,
 6 received in evidence, as of this date.)

7 Q. Do you recognize this as the complaint
 8 that was filed by Mr. Sucsuz in May of 2015?

9 A. Yes.

10 Q. And if you turn to page 6 and paragraph
 11 21, and I'll give you just a moment to read that
 12 paragraph to yourself.

13 (A pause in the proceedings.)

14 A. Okay.

15 Q. And does this refresh your recollection
 16 that Mr. Sucsuz alleged that he was treated with
 17 hostility after he complained that applicants that
 18 did not meet the program requirements were
 19 nevertheless receiving funding or tax credits?

20 A. Yes, that's the nature of the
 21 allegation.

22 Q. And if you can turn back a couple of
 23 pages to page 4, and we'll take a look at paragraph
 24 15. And just take a moment to read that.

25 (A pause in the proceedings.)

1 Cole - examination/Levick

2 A. Okay.

3 Q. And does this refresh your recollection
 4 that Mr. Sucsuz alleged that he found some
 5 applicants were giving phantom locations for their
 6 out-of-state alternatives, a requirement of some of
 7 the EDA tax incentive programs, and yet those
 8 applications were still being approved?

9 A. Yes, that's the nature of the
 10 allegation also.

11 Q. And is it a fair conclusion that your
 12 handwritten note on the document that we previously
 13 looked at regarding the phantom locations is a
 14 reference to this allegation?

15 A. Yes.

16 Q. And if you could take a look at the
 17 page preceding, page 3, paragraph 14, and take a
 18 moment to read that to yourself.

19 (A pause in the proceedings.)

20 A. Okay.

21 Q. And does this refresh your recollection
 22 a Mr. Sucsuz alleged that, when some applications
 23 showed little or no net benefit to the state, after
 24 he refused, his manager went ahead and changed
 25 those numbers to show that the applications did in

1 Cole - examination/Levick
 2 fact have a benefit to the state?

3 A. I'm sorry, the last part of your
 4 statement, that's correct, and that's the nature
 5 of the allegation.

6 Q. And is it a fair statement that your in
 7 order regarding the net benefit test and the
 8 documents that we read previously is a reference to
 9 this allegation?

10 A. Yes.

11 Q. And if you take a look at page 4,
 12 paragraph 17, take a moment to read that.

13 (A pause in the proceedings.)

14 A. Okay.

15 Q. And does this refresh your recollection
 16 that Mr. Sucsuz alleged that certain projects that
 17 should have been excluded from receiving a tax
 18 incentive award were nevertheless approved under
 19 the Grow New Jersey program?

20 A. Not clear -- I think that's an
 21 overgeneralization. But if you could just
 22 rephrase the question?

23 Q. Sure. Is it -- does this refresh your
 24 recollection that Mr. Sucsuz alleged that he
 25 objected to a certain program's approval for a tax

1 Cole - examination/Levick
2 incentive award on the basis that it was a
3 nonprofit and non-profits were excluded from the
4 tax incentive awards?

5 A. Yes, that's correct.

6 Q. And is it a fair conclusion that your
7 note on the previous document we looked at
8 regarding the "Grow non-profits excluded" is a
9 reference to this allegation?

10 A. Yes.

11 Q. And so would you agree, Mr. Cole, that
12 these allegations indicate conduct related to the
13 EDA tax incentive program?

14 A. Sorry, would I agree?

15 Q. That these allegations implicate
16 conduct related to the EDA tax incentive program?

17 A. Yes.

18 Q. Specifically, do the allegations
19 identify potential fraud or misrepresentation in
20 the application submitted to the EDA for tax
21 incentive awards, is that right?

22 A. Yes.

23 Q. And some of these allegations also
24 focused on the EDA's review and approval of tax
25 incentive awards.

1 Cole - examination/Levick

2 A. Yes.

3 Q. And so earlier, you had testified that
4 Mr. Sucsuz's had filed a complaint in 2014, and you
5 looked into those discrimination claims.

6 Now, turning back to the 2015 time
7 period, did you discuss with anyone at the EDA,
8 after this complaint was filed in 2015, whether the
9 EDA should conduct an internal investigation into
10 the allegations that Mr. Sucsuz made?

11 A. I did not.

12 Q. And why not?

13 A. Sitting here today, as I look back,
14 probably for a few reasons. One, I conducted what
15 I thought was a thorough investigation of the EEO
16 claims and as I said, I found no nexus between the
17 claims and any violation of state policy.

18 Lots of the actual claims themselves,
19 the allegations themselves, were baseless. And
20 based on the timing of, you know, sort of when the
21 employee was put on performance improvement plan
22 as compared to when he came to me with his EEO
23 claims, you know, it seemed like this was a
24 frivolous lawsuit and, when I learned the new
25 allegations, and that I was actually somehow part

1 Cole - examination/Levick
2 of the -- he alleged that I was somehow part of
3 firing the employee for making those allegations,
4 I guess I just thought they were baseless and
5 there was -- he was looking for sort of a larger
6 lawsuit payout.

7 And then also, I guess in my mind at
8 the time, the Attorney General's office was
9 involved with the claim. So, you know, I was
10 looking for guidance as to next steps.

11 Q. So just to recap a little bit on what
12 you just said, you testified that you found that
13 his EEO discrimination complaints were unfounded.
14 But you've also testified that he raised new,
15 brand-new allegations regarding misconduct or
16 potential misconduct of applicants and at the EDA.

17 So is it your testimony that you did
18 not investigate these new claims because the
19 discrimination claims were baseless?

20 A. Not directly, no. I was just kind of
21 setting the scene when you asked me why things
22 weren't followed up on. I guess another example
23 is, we've never really had a situation like this
24 where new allegations that EDA's management was
25 unaware of came through, you know, a lawsuit

1 Cole - examination/Levick
2 claim. So it was different and it was a different
3 type of scenario here.

4 Q. So then, is it your testimony that no
5 investigation in fact was ever conducted into these
6 allegations?

7 A. That's correct.

8 Q. But would it be your belief that your
9 colleagues took these things seriously, the new
10 claims?

11 A. Absolutely.

12 Q. And yet they still took no effort to
13 conduct an investigation into the claims?

14 A. They did not. Again, I think they
15 were waiting to see how it played out at trial.

16 Q. Okay. And so based on what you know
17 now, given that no investigation was conducted, is
18 it possible that some or all of the allegations are
19 true?

20 A. I don't know. They could be.

21 Q. And so do you know who within the EDA
22 would have made the decision whether or not to
23 initiate an investigation?

24 A. As I said, I think this case was
25 different because of the way the claims had come

1 Cole - examination/Levick
2 through. It wasn't a case where we were notified
3 by the employee at the time. But had it been a
4 typical -- and we do not -- we have many of these,
5 I can't even recall another instance, but if it
6 were a typical whistleblower case, it would
7 probably be me who would receive that information
8 and work with others to decide next steps, doing
9 the investigation.

10 Q. Would you agree that the allegations,
11 if true, could have a very serious impact on the
12 EDA?

13 A. I don't know.

14 Q. Okay. But if the allegations were
15 true, would you agree that a significant amount of
16 money that had been allocated as tax credits could
17 have been improperly awarded?

18 A. I don't know.

19 Q. But would you agree that some amount of
20 money would have been allocated improperly if these
21 allegations were true?

22 A. Yes, it's possible.

23 Q. And so, did the allegations, to your
24 knowledge, cause the EDA to retrain any of its
25 staff handling these tax incentive applications as

1 Cole - examination/Levick
2 a precautionary measure?

3 A. Sort of concurrent with the timing of
4 that case, there have been lots of audits and
5 reviews of EDA programs. I think we've learned a
6 lot along the way, and have begun to put many
7 different, other controls in place over the same
8 time period. Whether historically related to
9 these allegations in this complaint, I can't make
10 that connection.

11 Q. And do you recall the outcome of the
12 litigation?

13 A. Yes. The jury found for the EDA.

14 Q. Okay. And can you please turn to tab
15 6.

16 MS. LEVICK: I'm going to introduce
17 this into the record as Task Force
18 Exhibit 5.

19 REC'D (Task Force Exhibit 5, jury
20 verdict sheet from Sucsuz trial, received in
21 evidence, as of this date.)

22 Q. And is this the jury verdict sheet from
23 the trial that you just mentioned?

24 A. Yes.

25 Q. And could you please read the first

1 Cole - examination/Levick
2 paragraph into the record. The answer.

3 A. "CEPA count 1: Has plaintiff proven
4 by a preponderance of the evidence that he had a
5 reasonable belief that the New Jersey Economic
6 Development Authority violated a law, rule or
7 regulation in the processing of applications for
8 loans, grants, and tax incentives?" And the
9 answer is yes.

10 Q. Thank you. And so after the jury
11 finding, did the EDA conduct an investigation into
12 any of Mr. Sucsuz's claims about the EDA's
13 administration of tax incentive programs?

14 A. No.

15 Q. And after the verdict was issued, you
16 had mentioned just previously that, during this
17 time that you gave us for internal processes, but
18 as a result of this verdict, are you aware of any
19 effort to review whether its internal policies and
20 procedures were sufficiently robust with respect to
21 the tax incentive programs?

22 A. Seems like a broad question. Robust,
23 um -- among other things, the EDA looked at policy
24 and process around the incentive programs in
25 general.

1 Cole - examination/Levick

2 Q. And were there any efforts to
3 reevaluate these policies and procedures in the tax
4 incentive programs to prevent the kind of fraud or
5 misrepresentations, or detect the type of fraud and
6 misrepresentations that Mr. Sucsuz alleged on
7 behalf of the applicant?

8 A. I'm not aware of all or many of the
9 specific steps, but I would say yes, there are
10 some that I could think of.

11 Q. And was that as a result of this trial
12 or just as a general matter at the EDA?

13 A. I would say as a general matter.

14 Q. And so moving forward a couple of years
15 into 2018, so you're aware that Governor Murphy
16 directed the New Jersey State Comptroller to
17 conduct an audit of the EDA oversight of tax
18 incentive programs, correct?

19 A. Correct.

20 Q. And that audit began in February or
21 March of 2018?

22 A. Yes.

23 Q. And at that time, you were still, and
24 you still are now, the senior vice-president of
25 operations, right?

<p style="text-align: right;">Page 66</p> <p>1 Cole - examination/Levick</p> <p>2 A. Correct.</p> <p>3 Q. And so were you involved with the audit</p> <p>4 from the EDA side?</p> <p>5 A. Yes.</p> <p>6 Q. And what was your role in the audit?</p> <p>7 A. Generally, when the audit was</p> <p>8 initiated, I met with the comptroller's office</p> <p>9 team to ensure that they had all the resources</p> <p>10 that they needed, that introductions were made,</p> <p>11 requirements, you know, regarding space and sort</p> <p>12 of infrastructure where the audit itself took</p> <p>13 place; and I was sort of the, I guess, audit</p> <p>14 liaison in terms of ensuring that comptrollers had</p> <p>15 everything that they needed to conduct the audit.</p> <p>16 Q. This meeting that you just referred to,</p> <p>17 is it the opening conference that Top Comptroller</p> <p>18 Degnan may have mentioned at the last hearing, or</p> <p>19 you may not have heard -- but you understand there</p> <p>20 was a sort of kickoff or opening conference of the</p> <p>21 audit, is that is that meeting referred to?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall during this kickoff</p> <p>24 meeting that the comptroller discussed a number of</p> <p>25 document production categories?</p>	<p style="text-align: right;">Page 67</p> <p>1 Cole - examination/Levick</p> <p>2 A. Yes.</p> <p>3 Q. And one of those categories included</p> <p>4 documents related to all litigations pending and</p> <p>5 federal claims during a ten-year period starting</p> <p>6 from 2010 to tend of the audit, is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in your role as the senior</p> <p>9 vice-president, and as the audit liaison as you've</p> <p>10 described, you would have been responsible for</p> <p>11 gathering, reviewing and producing documents</p> <p>12 responsive to that request, is that right?</p> <p>13 A. To some degree, yes.</p> <p>14 Q. And what's the degree that's not yes?</p> <p>15 A. Again, I sort of had an oversight role</p> <p>16 to make sure that documents and such that they</p> <p>17 requested were produced in a timely manner. My --</p> <p>18 seemed to be more general nature, way less than</p> <p>19 some of the problematic projects that were needed</p> <p>20 and requests that were made.</p> <p>21 Q. I understand. So that ten-year period</p> <p>22 that I just mentioned, the approximately ten-year</p> <p>23 period from 2010 to the end of the audit, that</p> <p>24 period covered May 2015 when Mr. Sucsuz filed his</p> <p>25 complaint in New Jersey Superior Court?</p>
<p style="text-align: right;">Page 68</p> <p>1 Cole - examination/Levick</p> <p>2 A. That is correct.</p> <p>3 Q. And so did you turn over or inform the</p> <p>4 Comptroller's Office of the Sucsuz complaint?</p> <p>5 A. I did not.</p> <p>6 Q. And why not?</p> <p>7 A. I believe my thought process was</p> <p>8 that -- it actually didn't occur to me that that</p> <p>9 particular case was related to anything that they</p> <p>10 were investigating regarding programs. It seemed</p> <p>11 to be characterized in my mind as more of an</p> <p>12 employment-related litigation.</p> <p>13 Q. I just want to make sure the record is</p> <p>14 clear on this. You did not report it because you</p> <p>15 thought that his complaint was employment-related,</p> <p>16 Mr. Sucsuz's complaint was employment-related, or</p> <p>17 was it your testimony that the audit was not</p> <p>18 investigating programs?</p> <p>19 A. I guess what I'm saying is, you asked</p> <p>20 me if we turned over anything related to the case</p> <p>21 to the comptroller and the answer was no. It just</p> <p>22 was something that didn't occur to me that it was</p> <p>23 something they were looking for.</p> <p>24 Q. Okay. Could you please turn to tab 7</p> <p>25 of your binder.</p>	<p style="text-align: right;">Page 69</p> <p>1 Cole - examination/Levick</p> <p>2 MS. LEVICK: I'm going to introduce</p> <p>3 this document as Task Force Exhibit 6.</p> <p>4 REC'D (Task Force Exhibit 6, document</p> <p>5 tabbed 6 in binder, received in evidence, as</p> <p>6 of this date.)</p> <p>7 Q. And do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. And there's some handwriting and markup</p> <p>10 along the pages. Do you recognize that as your</p> <p>11 handwriting?</p> <p>12 A. Yes.</p> <p>13 Q. And could you please turn to the second</p> <p>14 page. There's a paragraph 9. And it says,</p> <p>15 "Lawsuits and Audits." And next to it, says,</p> <p>16 "Management must report all known lawsuits,</p> <p>17 mediations and arbitration claims pending or</p> <p>18 settled," and it goes on. And next to that</p> <p>19 paragraph, there's a handwritten note that says,</p> <p>20 "Program-specific." And that's your handwriting,</p> <p>21 is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And do you have an understanding of</p> <p>24 what that means?</p> <p>25 A. I actually don't recall what that</p>

<p style="text-align: right;">Page 70</p> <p>1 Cole - examination/Levick</p> <p>2 means.</p> <p>3 Q. Okay. But you understood that the</p> <p>4 comptroller's audit was about EDA tax incentive</p> <p>5 programs, right?</p> <p>6 A. Yes.</p> <p>7 Q. In fact it says it right in the header,</p> <p>8 it says, "Economic Incentive Programs"?</p> <p>9 A. Yes.</p> <p>10 Q. And so is it a fair assumption that the</p> <p>11 term "program-specific" referred to litigation and</p> <p>12 audits relating to the incentive programs?</p> <p>13 A. Perhaps. It could have. Again, I</p> <p>14 don't remember the specific discussions at the</p> <p>15 opening meeting.</p> <p>16 Q. And just to recap on your testimony</p> <p>17 from earlier, you testified that the allegations in</p> <p>18 Mr. Sucsuz's 2015 lawsuit involved EDA tax</p> <p>19 incentive programs, is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And so at the end of the audits, were</p> <p>22 you asked to sign a letter confirming certain</p> <p>23 information had been provided to the comptroller's</p> <p>24 audit?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 71</p> <p>1 Cole - examination/Levick</p> <p>2 Q. Could you please turn to the next tab,</p> <p>3 tab 8.</p> <p>4 MS. LEVICK: And I'm going to mark</p> <p>5 this into the record as Task Force</p> <p>6 Exhibit 7.</p> <p>7 REC'D (Task Force Exhibit 7, management</p> <p>8 representation letter dated 1/3/19 signed by</p> <p>9 Cole, received in evidence, as of this</p> <p>10 date.)</p> <p>11 A. Okay.</p> <p>12 Q. And do you recognize this as a</p> <p>13 management representation letter that you signed at</p> <p>14 the end of the comptroller's audit?</p> <p>15 A. Yes.</p> <p>16 Q. And you see that it's dated January</p> <p>17 3rd, 2019?</p> <p>18 A. Yes.</p> <p>19 Q. And did you draft this letter?</p> <p>20 A. No.</p> <p>21 Q. Is it your understanding that someone</p> <p>22 from the Comptroller's Office drafted it?</p> <p>23 A. Yes.</p> <p>24 Q. But you reviewed the contents and</p> <p>25 substance of the letter.</p>
<p style="text-align: right;">Page 72</p> <p>1 Cole - examination/Levick</p> <p>2 A. Yes.</p> <p>3 Q. And do you have an understanding of</p> <p>4 what the purpose was of this letter?</p> <p>5 A. Generally, a management representation</p> <p>6 letter, that's the standard issue in many audits</p> <p>7 and reviews at the end of the process to ensure</p> <p>8 that, you know, all representations that were made</p> <p>9 during the audit are acknowledged by management.</p> <p>10 Q. So this is a representation of</p> <p>11 information that had already been provided to the</p> <p>12 comptroller during the course of the audit?</p> <p>13 A. Yes.</p> <p>14 Q. And could you please read on the first</p> <p>15 page, paragraph 5, the first line where it says,</p> <p>16 "We had no knowledge of any," and then going on to</p> <p>17 the next page there's a second bullet, if you could</p> <p>18 just read those things out loud into the record.</p> <p>19 A. "We have no knowledge of any</p> <p>20 allegations of fraud or suspected fraud affecting</p> <p>21 the entity received in communications from</p> <p>22 employees, former employees, analysts, regulators,</p> <p>23 or others."</p> <p>24 Q. Could you also read paragraph 8 into</p> <p>25 the record.</p>	<p style="text-align: right;">Page 73</p> <p>1 Cole - examination/Levick</p> <p>2 A. "We have disclosed all details</p> <p>3 concerning any pending claims, assessments and</p> <p>4 litigation against us of which we are aware, and</p> <p>5 which would have a significant effect on financial</p> <p>6 operations."</p> <p>7 Q. And just turning back to the first</p> <p>8 page, in the first paragraph, you see, it says this</p> <p>9 is for the period of January 1, 2010 to January</p> <p>10 3rd, 2019, is that right?</p> <p>11 A. Correct.</p> <p>12 Q. And do you recall making these</p> <p>13 representations?</p> <p>14 A. Yes.</p> <p>15 Q. And prior to signing this letter, did</p> <p>16 you discuss this letter with anyone else?</p> <p>17 A. I did not.</p> <p>18 Q. Do you recall having discussed whether</p> <p>19 to disclose the Sucsuz litigation to the</p> <p>20 comptroller's audit?</p> <p>21 A. No.</p> <p>22 Q. Are you aware of whether anyone else in</p> <p>23 fact turned over the information to the comptroller</p> <p>24 during this audit?</p> <p>25 A. I honestly don't recall and don't</p>

1 Cole - examination/Levick
2 remember anyone else on my team that turned that
3 over. I sort of recall I may have turned over a
4 hard copy of what was an inventory, if you will,
5 of litigation against the EDA that the Attorney
6 General's office prepared on behalf of the annual
7 financial statement audit, but I honestly don't
8 recall whether that was turned over to the
9 comptroller's.

10 Q. You don't have an independent
11 recollection of actually turning over this
12 litigation material to the comptroller's audit.

13 A. That's correct.

14 Q. And again, just to be clear, this would
15 have been your responsibility, right, given that
16 you signed a letter representing that all
17 information had been turned over?

18 A. Yes, for the most part.

19 Q. Did anyone direct you to withhold the
20 information from the comptroller?

21 A. No.

22 Q. So in part, by not turning it over, the
23 comptroller did not know about the specific and
24 detailed allegations of fraud?

25 A. Unless they learned about it in a

1 Cole - examination/Levick
2 different manner that we didn't turn it over, that
3 was not -- I was not aware.

4 Q. But you agree, right, that Mr. Sucsuz's
5 allegations directly relate to the tax incentive
6 programs that were the subject of the comptroller's
7 audit?

8 A. Yes. Actually, looking back at it for
9 you, can I see where that connection would be
10 made.

11 Q. So in retrospect, should the
12 Comptroller's Office have been provided with
13 information regarding this litigation?

14 A. Yes, but I wouldn't say limited to the
15 Sucsuz litigation, that case. I would say it was
16 any litigation related to the scope of the work
17 during that time period.

18 Q. Are you aware of any other litigation
19 that was limited to the scope of their work in that
20 time period?

21 A. I can think of some project-related
22 items. But whether they fell into the scope of
23 the audit or if they were interested in it or not,
24 I couldn't tell you. I would prefer to share
25 everything with them and let them decide what they

1 Cole - examination/Levick
2 will do with it.

3 Q. And just to be clear, that litigation
4 that you're referring to that is program-specific,
5 are you referring to litigation involving the EDA
6 or litigation that is involving the applicants that
7 are applying for the tax incentive program?

8 A. It could be both.

9 MS. LEVICK: So we may want to follow
10 up with you after this hearing to see if
11 there's litigation that we should be aware
12 of. But that is all I have for today, and I
13 want to thank you for your cooperation
14 coming here today.

15 Does anyone else...

16 PROF. CHEN: Mr. Walden has some.

17 EXAMINATION BY

18 MR. WALDEN:

19 Q. I just want to ask you a couple of
20 questions. This was a complaint that raised
21 allegations of at least potential fraud. We've
22 looked at your note or, notes. Would it be fair to
23 say that the litigation was actually ongoing during
24 the audit?

25 A. That's correct.

1 Cole - examination/Walden

2 Q. In fact, there were -- even as the
3 comptroller -- were people being deposed?

4 A. Yes, I believe so.

5 Q. And during the course of the audit, the
6 case actually went to trial.

7 A. Yes.

8 Q. So is it fair to say that during the
9 entire audit, this was kind of top-of-mind to you,
10 that the litigation was top-of-mind, given the fact
11 that senior executives were being deposed and then
12 his case went to trial where you were a defendant?

13 A. Yes, it was top-of-mind.

14 Q. So I just want to be really clear. Did
15 anyone put pressure on you in any way, shape or
16 form to withhold this, contrary to your wishes?

17 A. Absolutely not.

18 Q. Okay.

19 MR. WALDEN: All right, thank you.

20 PROF. CHEN: Thank you. I just want
21 to -- just to be clear --

22 EXAMINATION BY

23 PROF. CHEN:

24 Q. Apart from the Sucsuz litigation, are
25 you aware of any other litigation in which it was

1 Cole - examination/Chen
2 alleged -- alleged -- that there was any type of
3 misconduct or malfeasance within EDA in the
4 handling of one of these tax incentive
5 applications?

6 A. No, not that I'm aware of.

7 Q. And would it be fair to say that if
8 there had been such litigation, it would have come
9 to your attention?

10 A. During the timing yes.

11 Q. During the timing in which you served
12 in your capacity?

13 A. Yes.

14 PROF. CHEN: Thank you, nothing
15 further.

16 MR. WALDEN: Thank you very much,
17 Mr. Cole.

18 (The witness was excused.)

19 PROF. CHEN: Next we have testimony of
20 Kerrie-Ann Murray, who will be examined by
21 Ms. Winston.

22 (Continued on following page.)
23
24
25

1 Murray - examination/Winston
2 K E R R I E - A N N M U R R A Y , having been
3 first duly sworn, was examined and testified
4 as follows:

5 EXAMINATION BY

6 MS. WINSTON:

7 Q. Good morning, Ms. Murray.

8 A. Good morning.

9 Q. I want to thank you for taking the time
10 to be here today. Can you hear me?

11 A. Yes.

12 Q. We are aware that in April 2018, you
13 filed a complaint with the New York Division of
14 Human Rights against your former employer.

15 We want to speak with you about your
16 experience with that company and your allegations
17 related to employee payroll information in
18 connection with the EDA Grow New Jersey program.
19 We're not here to draw conclusions about your case,
20 but we look forward to hearing your perspectives.

21 One further note, as Mr. Walden
22 mentioned previously, it's still early in this
23 investigation, so we want to be especially careful
24 to protect everyone's due process rights. And we
25 understand that your former employer disputes these

1 Murray - examination/Winston
2 claims, so we ask that you share with us your
3 personal knowledge without identifying your former
4 employer's name, without identifying your
5 colleagues by name, and without saying what, if
6 anything, you personally did as well, do you
7 understand?

8 A. I understand.

9 Q. You're not represented by counsel here
10 today, correct?

11 A. Correct.

12 Q. Do you understand that you have a right
13 to have counsel present?

14 A. Correct.

15 Q. And you've been sworn in. You
16 understand that you're to tell the truth today?

17 A. Yes.

18 Q. I'm going to ask you some questions
19 about your background and your past employment,
20 again, please don't refer to any employees or any
21 individuals by name.

22 Ms. Murray, are you currently employed?

23 A. Yes.

24 Q. What do you do for a living?

25 A. I'm a payroll manager.

1 Murray - examination/Winston

2 Q. What does that entail?

3 A. It is processing payroll for active
4 employees for the company that I'm employed by.

5 Q. How long have you worked as a payroll
6 manager?

7 A. Over ten years.

8 Q. And are you familiar with the New
9 Jersey Economic Development Authority, which I'll
10 refer to as the EDA?

11 A. Yes.

12 Q. How did you become familiar with the
13 EDA initially?

14 A. While an employee at my former
15 employer, once the grant was given or once the
16 go-ahead was actually given, the staff was pulled
17 into a private meeting to explain to us what are
18 the next options to move the company to New
19 Jersey. And that was the first time.

20 Q. I just want to unpack that a little
21 bit. You referred to your former employer, and you
22 referred to a grant. Is that referring to an EDA
23 tax incentive program?

24 A. Yes.

25 Q. And is it your testimony that your

1 Murray - examination/Winston
2 former employer was signing for an EDA tax
3 incentive program?

4 A. Based on the implication that was
5 given to us, yes.

6 Q. And do you know what tax incentive
7 program it was applying for?

8 A. At the time, we were told it was the
9 Grow New Jersey.

10 Q. Okay. When did you start working for
11 this company?

12 A. In 2015.

13 Q. In 2015?

14 A. Yes.

15 Q. What was your role at that company?

16 A. Payroll manager.

17 Q. What kind of company was it?

18 A. Financial services.

19 Q. Where was the company based when you
20 started?

21 A. In New York City.

22 Q. And did it move to New Jersey
23 ultimately?

24 A. Yes.

25 Q. Did it move to New Jersey while you

1 Murray - examination/Winston
2 were employed there?

3 A. Yes.

4 Q. Approximately when did it move to New
5 Jersey, if you recall?

6 A. July of 2016.

7 Q. And why did it move to New Jersey?

8 A. It was a part of the EDA Grow New
9 Jersey grant that we were previously told about
10 prior, and that was what the first initial meeting
11 was about, was to get everyone together and get
12 ourselves together for this move that was going to
13 take place mid-summer of 2016.

14 Q. And I want to unpack that a little bit.
15 Your testimony is that your former company moved to
16 New Jersey in connection with the EDA Grow New
17 Jersey program, is that correct?

18 A. Yes.

19 Q. And in connection with that program,
20 did your former employer intend to move from New
21 York City to New Jersey?

22 A. No -- I'm sorry, could you say
23 again --

24 Q. In connection with that program, did
25 your company intend to move from New York City to

1 Murray - examination/Winston
2 New Jersey?

3 A. Yes.

4 Q. And that was in order to obtain tax
5 incentive --

6 A. Corrects.

7 Q. -- credits? Around, you referred, I
8 think, to summer of 2016, when did you first hear
9 that the company was going to move to New Jersey?

10 A. In mid-May of 2016.

11 Q. And approximately how many employees
12 did the company have in New York in May or June
13 2016 when you learned it planned to move to New
14 Jersey?

15 A. Approximately around eighty employees
16 at the time.

17 Q. And was it the company's intent, to the
18 best of your knowledge, to move all of those eighty
19 some-odd employees from New York to New Jersey?

20 A. Yes.

21 Q. And was the company planning to create
22 additional jobs as part of its move?

23 A. Yes.

24 Q. And do you know how many additional
25 jobs the company was planning to create?

1 Murray - examination/Winston

2 A. Approximately about one hundred to 125
3 more, additional positions.

4 Q. A hundred to 125 --

5 A. Approximately, yes.

6 Q. And did you have any role in helping to
7 hire for those hundred some-odd additional jobs?

8 A. No.

9 Q. Did you play any role at all in helping
10 the company to find employees to fill those
11 additional jobs?

12 A. Yes.

13 Q. What was that role?

14 A. To contact the New Jersey Department
15 of Labor.

16 Q. And why were you told to contact the
17 New Jersey Department of Labor?

18 A. At the time, because the move between
19 the time that we were being told that we had to
20 move, and the time -- it was such a short span of
21 time and the time that we had to move and the time
22 that we were given to create the positions,
23 previous, I'll say, job positions were not posted
24 in New Jersey.

25 So at the time, I can only say that

1 Murray - examination/Winston
2 contacting the Department of Labor would be -- the
3 easiest way to go is if they had employees who
4 were already unemployed, so it would be easier to
5 pick from that pool than it is to post positions
6 and then wait.

7 Q. Okay. And do you have an understanding
8 that, you mentioned that your company was
9 participating in the EDA's Grow New Jersey program.
10 Was your company also intending to participate in
11 any additional programs administered by the DOL?

12 A. Yes.

13 Q. And do you know anything about that
14 particular DOL program?

15 A. Yes.

16 Q. Can you explain what that particular
17 program was?

18 A. Subsequently once we got to New
19 Jersey, there was an additional program from
20 the -- through the Department of Labor where the
21 company was reimbursed half of the hourly salary
22 for each hourly employee that was hired, on top of
23 another incentive which was the Welfare-to-Work
24 program tax incentive where, if the company hired
25 from a particular pool of employees who lived in

1 Murray - examination/Winston
2 certain areas in New Jersey who were on welfare,
3 who were coming back from unemployment, who were
4 veterans, would also receive an additional tax
5 credit as well.

6 Q. Okay. So it's your understanding that
7 in connection with the separate EDA program, in
8 connection with certain Department of Labor
9 programs, your former employer was hiring employees
10 and through that hiring would get some kind of
11 reimbursement for the employees' salaries, correct?

12 A. Correct.

13 Q. And just to be clear, I understand your
14 testimony that your former employer participated in
15 separate programs relating to -- administered by
16 the EDA and being administered by the DOL. I'm
17 going to focus primarily on the Grow New Jersey EDA
18 programs.

19 A. Okay.

20 Q. Did the people you were hiring
21 generally have experience in the company's
22 industry, in the financial services industry?

23 A. No.

24 Q. Was the company ultimately able to hire
25 the necessary number of employees to receive the

1 Murray - examination/Winston
2 tax credits under Grow New Jersey?

3 A. Yes.

4 Q. And that was the hundred some-odd
5 employees, you needed to hire those to receive the
6 credits under Grow New Jersey?

7 A. Correct.

8 Q. Do you know whether there was a
9 deadline for the company to hire those employees?

10 A. I believe so, yes.

11 Q. And did the company meet that deadline,
12 to your knowledge?

13 A. Yes.

14 Q. So the company hired a hundred some-odd
15 employees?

16 A. Yes.

17 Q. And did your company ultimately move to
18 New Jersey?

19 A. Yes.

20 Q. Do you know when that was?

21 A. July 2016.

22 Q. July 2016?

23 A. Yes.

24 Q. And were the new employees that were
25 hired, hired into preexisting positions at the

1 Murray - examination/Winston
2 company or were new positions made for them?

3 A. New positions were made.

4 Q. And what was the role of this, these
5 new programs, was it a single department?

6 A. It was a single department.

7 Q. What was the department?

8 A. The department's name, or what was
9 the --

10 Q. What was the purpose of the department?

11 A. So the purpose of the department was
12 to make phone calls to potential loan borrowers.

13 Q. And were you surprised when the company
14 created this department?

15 A. Yes.

16 Q. Why?

17 A. Because it wasn't a role or --
18 positions that the company previously used. The
19 company does subprime lending, so you would have
20 to be very experienced in sales, experienced in
21 selling, experienced in -- in getting borrowers to
22 actually borrow money at those -- at the high
23 percentage rate.

24 Q. And what kind of experience generally
25 did these new employees that were hired have?

1 Murray - examination/Winston
2 A. Retail, fast food experience, not
3 sales.
4 Q. Okay. And were the new hires paid
5 hourly or were they paid a salary?
6 A. Hourly.
7 Q. What was their average pay?
8 A. Ten dollars per hour.
9 Q. And some of that was reimbursed by the
10 Department of Labor?
11 A. Correct.
12 Q. You testified that the company made
13 approximately a hundred or 120 additional new hires
14 initially. Were any additional new hires made
15 throughout later in 2016?
16 A. Um -- yes.
17 Q. What was that?
18 A. As hires came and left, to the best of
19 my knowledge, staff was told that we had to move
20 in an average number of 225 employees. So there
21 was a, if I can use the word, a rolling hire that
22 kept, so we kept the ball rolling.
23 Q. Okay. And you said you -- the company
24 had to maintain an average number of 225 employees.
25 Was that in order to obtain the Grow New Jersey

1 Murray - examination/Winston
2 grant?
3 A. Yes.
4 Q. And how did you know that these new
5 people were being hired in connection with the EDA
6 tax credit program?
7 A. Because when staff submitted the
8 actual Grow New Jersey grant spreadsheet, which
9 that was the name at the top of the spreadsheet,
10 that was the subsequent number that we were told
11 had to be there.
12 Q. Okay. So I just want to unpack that a
13 little bit as well. You just referred to a
14 spreadsheet. Can you tell me what the spreadsheet
15 is that you're referring to?
16 A. So monthly, an Excel spreadsheet that
17 could not be manipulated at all, which contained
18 payroll and data of employees' names, their
19 departments, their salary earned for that month,
20 their annual salary, hours worked, had to be
21 submitted. And at the top of that spreadsheet it
22 always said, "Grow New Jersey."
23 Q. So just to make that clear, on a
24 monthly basis, staff of this company filled out a
25 spreadsheet, the header of which was, "Grow New

1 Murray - examination/Winston
2 Jersey," and that spreadsheet was filled out with
3 employee data?
4 A. Correct.
5 Q. And what data did that include?
6 A. It included employees' names,
7 employees' departments, their work location,
8 annual salaries, their --
9 Q. Hours worked?
10 A. -- and hours worked.
11 Q. And staff submitted that internally to
12 management?
13 A. Correct.
14 Q. Okay. And in terms of hours worked, to
15 the best of your knowledge, were employees required
16 to work a certain number of hours per period?
17 A. Correct.
18 Q. Was there ever a time when staff was
19 filling out the EDA Grow New Jersey spreadsheet you
20 referred to, and one or more employees didn't meet
21 the minimum hours requirement for that period?
22 A. Yes.
23 Q. And in those instances, what did the
24 staff do?
25 A. The staff was instructed to reach out

1 Murray - examination/Winston
2 to the employee's manager to find out why this
3 employee did not work the required hours, and if
4 the employee did not -- if the manager didn't have
5 any rhyme or actual reason as to why, staff was
6 instructed to backfill those hours with what
7 payroll people say, "PTO time," which is paid time
8 off, which is either sick or vacation or personal
9 hours.
10 Q. So in other words, if the required
11 minimum number of hours wasn't met, staff was
12 instructed to essentially up those hours using paid
13 time off?
14 A. Correct.
15 Q. And separate from that paid time off
16 issue, at any point, did management give staff
17 other directives regarding current or former
18 employees, or have to document pay or employment to
19 meet the EDA's requirements?
20 A. Yes.
21 Q. Can you tell me a little bit about
22 that?
23 A. So there was one particular case where
24 an employee -- employment was terminated while the
25 office was still in New York City. However, to

1 Murray - examination/Winston
2 meet the Grow New Jersey head count, that
3 employee's termination was subsequently pulled all
4 the way across into 2016 and the severance pay was
5 pulled all the way out until that end of 2016,
6 once the final spreadsheet staff submitted the
7 final spreadsheet for the Grow New Jersey grant.

8 Then the employee was -- then removed
9 from all HR functions and removed from the company
10 records.

11 Q. So just to clarify, when you say
12 "pulled across 2016," do you mean that there was a
13 terminated employee remained on payroll records
14 because severance was staged out, is that what you
15 mean by "pulled across"?

16 A. Yes.

17 Q. Okay. Did the new, the cold calling
18 group, the sales group that you referred to that
19 was created in 2016, continue to be employed at the
20 company throughout 2017?

21 A. No.

22 Q. Why not?

23 A. They were terminated in early January
24 of 2017.

25 Q. And when you say they were terminated,

1 Murray - examination/Winston
2 all of the new hires were terminated?

3 A. Correct.

4 Q. The entire group?

5 A. Yes.

6 Q. About how many people were terminated?

7 A. At the time, there were approximately,
8 about 80 of them were -- when I say "them," I
9 mean -- because they were grouped into one
10 particular department, so, yes.

11 Q. It's easier to say that they were there
12 one day and gone the next, eventually?

13 A. Yes.

14 Q. And they were terminated all at once,
15 is that right?

16 A. Yes.

17 Q. Do you know why they were terminated?

18 A. No.

19 Q. Were any new employees hired into the
20 group once those employees firing took place in
21 around January 2017?

22 A. No, those positions were eliminated.

23 Q. Were eliminated?

24 A. Yes.

25 Q. And to your knowledge, did the company

1 Murray - examination/Winston
2 continue throughout the year to fill out the Grow
3 New Jersey spreadsheets?

4 A. For maybe one or two months after
5 that.

6 Q. And then it stopped?

7 A. Correct.

8 Q. And are you aware of whether the
9 company ultimately received tax incentive credit
10 through the Grow New Jersey program and what they
11 did with it?

12 A. So staff was told, once staff inquired
13 as to why we no longer needed to keep hiring
14 employees, keep the relationship open with the New
15 Jersey Department of Labor, or to complete the
16 Grow New Jersey spreadsheet, we were told that the
17 tax credit was sold to another company.

18 Q. And you don't work at this company any
19 longer, is that correct?

20 A. No.

21 MS. WINSTON: That's all I have for
22 today. Thank you very much for your time.
23 I'll turn it over to --

24 PROF. CHEN: In may not be necessary,
25 I guess, because the record is clear.

1 Murray - examination/Chen
2 EXAMINATION BY
3 PROF. CHEN:

4 Q. When you made reference to the
5 Department of Labor, you were referring to the New
6 Jersey State Department of Labor --

7 A. Yes.

8 Q. -- not The Federal Department of Labor.

9 A. That's correct.

10 PROF. CHEN: All right, thank you.

11 MS. WINSTON: Thank you very much,
12 Ms. Murray.

13 (The witness was excused.)

14 PROF. CHEN: So next, we'll hear from
15 Mr. John Boyd.

16 J O H N B O Y D , having been first duly
17 sworn, was examined and testified as
18 follows:

19 EXAMINATION BY

20 MR. BORCHARDT:

21 Q. Good morning.

22 A. Good morning.

23 Q. Could you state and spell your name for
24 the record, please?

25 A. John Boyd.

1 Boyd - examination/Borchardt
2 Q. Mr. Boyd, we have never met before
3 face-to-face but we have spoken before on the
4 phone, is that right?
5 A. Yes.
6 Q. Well, it's nice to see you now. Thank
7 you for being here, for testifying. Just so you
8 know, my questions will be the same questions, or
9 very similar to what I've asked you before, so you
10 shouldn't expect any surprises. Where do you work,
11 Mr. Boyd?
12 A. The Boyd Company.
13 Q. And what is your title at The Boyd
14 Company?
15 A. Principal.
16 Q. How long have you been at The Boyd
17 Company?
18 A. I joined the firm 2002, after college,
19 but I grew up with the business. My dad founded
20 the firm back in 1975. My earliest experiences in
21 life were traveling the country, related to
22 projects that our firms carried out.
23 Q. You say you grew up in the business. I
24 want to make sure we understand, what is The Boyd
25 Company's business?

1 Boyd - examination/Borchardt
2 is specialization. The site selection process is
3 a rare process to go through for a corporation. A
4 good consultant is constantly monitoring business
5 climate factors that are critical to a company's
6 staff and operations. And lastly,
7 confidentiality. Corporations and businesses want
8 the site selection process to be confidential
9 until a final decision is made.
10 Q. And you may have already mentioned
11 this. But in case you didn't, what kinds of
12 companies does The Boyd Company work with?
13 A. Clients of ours include Boeing, Pratt
14 & Whitney, PNC Bank, TD Bank. Most of our work is
15 with Fortune 500 to Fortune 100 companies. But we
16 also service smaller companies as well.
17 Q. Okay. So large companies,
18 and forgive the obvious observation, but I'm sure
19 it's different to relocate a ten-person office than
20 it is to relocate a ten-thousand-person office,
21 right?
22 A. Yes.
23 Q. So I want to ask you today about the
24 middle range, if you would, offices of two hundred
25 to four hundred employees. Do you have experience

1 Boyd - examination/Borchardt
2 A. We counsel major U.S. and overseas
3 corporations where to locate their facilities
4 throughout America. Clients of ours include
5 Boeing, Pepsico, JPMorgan Chase --
6 Q. Is that referred to as corporate site
7 selection?
8 A. Corporate site selection, yes.
9 Q. Help us understand, why is corporate
10 site selection important?
11 A. Corporate site selection is the
12 process of studying multiple locations and
13 choosing the optimum location for a company to put
14 in a facility, one of the most significant
15 decisions a company will make. It's a very long,
16 exhaustive process.
17 Q. So why do companies hire corporate site
18 selection consultants like yourself?
19 A. Three major reasons. The first reason
20 a company would hire a consultant is independence.
21 A good consultant is not influenced by any type of
22 downstream commission interest that is associated
23 with a particular real estate site. They are also
24 not influenced by any type of internal bias that
25 may exist within a company. Another major reason

1 Boyd - examination/Borchardt
2 in corporate relocation projects of that size? And
3 to make sure the record is clear, by "that size," I
4 mean two hundred to four hundred.
5 A. Yes.
6 Q. How many times have you worked on
7 projects of that size?
8 A. Dozens of times.
9 Q. So today when I ask you questions about
10 how site selection works, you'll understand that
11 we're talking about moves of that size, several
12 hundred employee offices, okay?
13 A. Yes.
14 Q. All right. So is it fair to say that
15 for companies, the site selection decision, picking
16 a state, a region, a locality, a particular
17 building is a complex question?
18 A. Yes.
19 Q. So what kind of process do you use to
20 help companies select the ideal relocation site?
21 A. Site selection is both a science and
22 an art. The science is the quantitative analysis,
23 measuring business costs and taxes in one market
24 versus another. The qualitative analysis has to
25 do with measuring things like transportation

<p style="text-align: right;">Page 102</p> <p>1 Boyd - examination/Borchardt</p> <p>2 assets, and specific talent assets that a</p> <p>3 particular region has. The acronym that we use</p> <p>4 for office projects is TALIO, and T is for talent,</p> <p>5 A is for access to the market, with transportation</p> <p>6 hubs, the presence of a major gateway or national</p> <p>7 airport. L is for lifestyle. Companies want to</p> <p>8 be in locations that are attractive for retaining</p> <p>9 and recruiting workforce. I is for incentives.</p> <p>10 Incentives are an important and high-profile part</p> <p>11 of the site selection process today.</p> <p>12 And lastly, operating costs, okay?</p> <p>13 Operating costs can vary significantly by</p> <p>14 geography. Labor costs in south Florida, for</p> <p>15 example, could be 20 percent less than in</p> <p>16 Manhattan.</p> <p>17 Q. So there are a lot of factors you're</p> <p>18 looking at, is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. So from the beginning of the process to</p> <p>21 the end, from when a company decides it's thinking</p> <p>22 about moving to when they ultimately select the</p> <p>23 location it will move to, approximately how long</p> <p>24 does that take?</p> <p>25 A. Typically six months to a year.</p>	<p style="text-align: right;">Page 103</p> <p>1 Boyd - examination/Borchardt</p> <p>2 Q. And who at the company is typically</p> <p>3 involved?</p> <p>4 A. The accounting department, the legal</p> <p>5 department, the HR department plays a very</p> <p>6 important role in the site selection process, and</p> <p>7 increasingly, the communications department.</p> <p>8 Branding has become a big part of relocation</p> <p>9 decisions today.</p> <p>10 Q. So if you will, paint a picture for us</p> <p>11 for what the process looks like from beginning to</p> <p>12 end. Are there meetings, reports, site visits,</p> <p>13 what do you do?</p> <p>14 A. Every project is different.</p> <p>15 Typically, the project begins with a meeting with</p> <p>16 various members of the company. Again, the HR</p> <p>17 could also be in the room, the legal department is</p> <p>18 typically in the room, the accounting function in</p> <p>19 the room. And we plug the objectives on the move;</p> <p>20 what are the key drivers, are there any initial</p> <p>21 geographic preferences that we should take a look</p> <p>22 at.</p> <p>23 Then we begin doing our work, we</p> <p>24 prepare a analytical document. That documents</p> <p>25 operating costs and taxes, and all of the markets</p>
<p style="text-align: right;">Page 104</p> <p>1 Boyd - examination/Borchardt</p> <p>2 that we're serving. And then we begin the process</p> <p>3 of elimination; and a big part of that process of</p> <p>4 elimination is developing a short list, and then</p> <p>5 we start doing field investigations. Field</p> <p>6 investigations practically are an essential part</p> <p>7 of any competent, diligent site selection process</p> <p>8 today.</p> <p>9 Q. You said field investigation, is that</p> <p>10 the same as a site visit?</p> <p>11 A. Site visit, yes.</p> <p>12 Q. How common are site visits, are they</p> <p>13 sometimes a part of the process, always part of the</p> <p>14 process?</p> <p>15 A. They are always a part of the process.</p> <p>16 Q. Okay. In one project, just roundabout</p> <p>17 figure, how often would you go on a site visit?</p> <p>18 A. Typically the top three or five</p> <p>19 locations receive at least three site visits from</p> <p>20 our firm. Then the client will do site visits,</p> <p>21 and will meet with many of the same individuals</p> <p>22 that we meet with HR directors in the labor</p> <p>23 market, to give a sense of real-time labor market</p> <p>24 factors like turnover rates, prevailing wage</p> <p>25 rates.</p>	<p style="text-align: right;">Page 105</p> <p>1 Boyd - examination/Borchardt</p> <p>2 We'll meet with leaders in the real</p> <p>3 estate community, get a sense of residential</p> <p>4 housing options for the workforce; and of course,</p> <p>5 the commercial industry, to see what type of sites</p> <p>6 exist for the company. I will also meet with</p> <p>7 academic officials and elected officials and other</p> <p>8 important people in the marketplace assessing the</p> <p>9 overall tenor of the market, is it pro-business,</p> <p>10 is it pro-development.</p> <p>11 Q. I want to make sure I understand. It</p> <p>12 sounds like site visits are often to a region. Is</p> <p>13 the site visit also to a particular piece of real</p> <p>14 estate considering whether this is the office we</p> <p>15 want?</p> <p>16 A. That's really the last piece of the</p> <p>17 puzzle where, once a company is sold on a specific</p> <p>18 region, it becomes about finding the right site at</p> <p>19 that region. We may give special preference to an</p> <p>20 area that falls in an opportunity zone, for</p> <p>21 example. And then of course, this part of</p> <p>22 process, the company's real estate folks begin to</p> <p>23 gradually take over, to look to us to make some</p> <p>24 initial recommendations based upon real estate,</p> <p>25 and we're happy to do that.</p>

<p style="text-align: right;">Page 106</p> <p>1 Boyd - examination/Borchardt</p> <p>2 Q. Okay. So it sounds like during this</p> <p>3 process there are meetings at the company to</p> <p>4 discuss the sites.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Reports are being drawn up?</p> <p>7 A. Yes.</p> <p>8 Q. Thank you. So basically, your</p> <p>9 testimony sounds like a lot of work and analysis</p> <p>10 goes into picking the best location, is that a fair</p> <p>11 generalization?</p> <p>12 A. Yes.</p> <p>13 Q. And it sounds like a lot of</p> <p>14 documentation is generated during the site</p> <p>15 selection process; memos, e-mail, reports, is that</p> <p>16 fair?</p> <p>17 A. That's accurate. I would also expect</p> <p>18 the company to be able to produce receipts related</p> <p>19 to on-site travel visits.</p> <p>20 Q. And I want to make sure this is clear,</p> <p>21 the testimony you're giving now is about office</p> <p>22 sizes of two to four hundred employees. For moves</p> <p>23 of that sort, you would expect this sort of</p> <p>24 process.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 Boyd - examination/Borchardt</p> <p>2 Q. The really small startup companies of</p> <p>3 course might do some things differently, but for a</p> <p>4 move of this size, this is what you can expect.</p> <p>5 A. Yes.</p> <p>6 Q. So if the Task Force wants to know</p> <p>7 whether a company is seriously relocating to a site</p> <p>8 that the company says it's thinking about, it</p> <p>9 sounds like the company should be able to produce a</p> <p>10 lot of documentation of its deliberations. Do you</p> <p>11 agree with that statement?</p> <p>12 A. I agree with that.</p> <p>13 Q. Okay. If we request the sort of</p> <p>14 evidence from a company but the company can't</p> <p>15 produce it, does that suggest that maybe the</p> <p>16 company was never seriously considering the site?</p> <p>17 A. Yes.</p> <p>18 Q. Let me ask you a few hypotheticals.</p> <p>19 Before I do that, I want to make sure this is</p> <p>20 clear.</p> <p>21 You have not examined any of the</p> <p>22 evidence that the Task Force is looking at related</p> <p>23 to specific companies, right?</p> <p>24 A. That's correct.</p> <p>25 Q. So the questions I'm going to ask you</p>
<p style="text-align: right;">Page 108</p> <p>1 Boyd - examination/Borchardt</p> <p>2 and the answers you're going to provide, a lot of</p> <p>3 them are about specific companies, right?</p> <p>4 A. Yes.</p> <p>5 Q. To get something else out of the way,</p> <p>6 you're not a real estate broker but part of your</p> <p>7 work is helping companies find real estate,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. So when you find a potential office</p> <p>11 location to consider for relocation, if the company</p> <p>12 is interested in that property, one option the</p> <p>13 company has is to negotiate for an extended offer</p> <p>14 period so an offer will stay open and the company</p> <p>15 has time to consider whether it wants the site, is</p> <p>16 that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And a company can negotiate to keep an</p> <p>19 offer open for months, is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. If a company is serious about</p> <p>22 relocating to a particular site, it may well</p> <p>23 negotiate for the sort of extended offer period,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 Boyd - examination/Borchardt</p> <p>2 Q. So if a company only has an offer valid</p> <p>3 for let's say a week or two, does that create a</p> <p>4 question to your mind about whether the company is</p> <p>5 seriously considering the site?</p> <p>6 A. Yes.</p> <p>7 Q. Thank you. Let me ask about a</p> <p>8 different issue. You help companies find space in</p> <p>9 office towers, specifically, right?</p> <p>10 A. Yes.</p> <p>11 Q. And oftentimes companies are large</p> <p>12 enough that they have to spread across multiple</p> <p>13 floors of an office building, correct?</p> <p>14 A. Yes.</p> <p>15 Q. When companies do spread across</p> <p>16 multiple floors, I imagine they usually want the</p> <p>17 floors to be contiguous, for example, 2, 3, 4, 5,</p> <p>18 is that correct?</p> <p>19 A. They always want contiguous workspace.</p> <p>20 Q. Have you ever had an experience where a</p> <p>21 client has wanted noncontiguous floors such as 3, 7</p> <p>22 and 14?</p> <p>23 A. No.</p> <p>24 Q. Would you ever recommend to your client</p> <p>25 that they adopt non-contiguous floors for their</p>

<p style="text-align: right;">Page 110</p> <p>1 Boyd - examination/Borchardt</p> <p>2 office configuration?</p> <p>3 A. Barring some natural disaster</p> <p>4 response, the answer is no.</p> <p>5 Q. So if a company said that it seriously</p> <p>6 considered a move to floors 3, 7 and 14, would that</p> <p>7 raise an eyebrow for you?</p> <p>8 A. Yes.</p> <p>9 Q. Let me ask you about a different issue.</p> <p>10 Let's say you're looking for a property for one of</p> <p>11 your clients, and the real estate broker tells you</p> <p>12 that a different company has a right of first</p> <p>13 refusal on the property. I want to make sure we</p> <p>14 understand what that means. What is a right of</p> <p>15 first refusal?</p> <p>16 A. A right of first refusal is when a</p> <p>17 landlord has an agreement with a specific company</p> <p>18 to give them the first shot at buying or leasing</p> <p>19 office space before they market or try to get an</p> <p>20 additional tenant for the space.</p> <p>21 Q. So if you're looking at a property and</p> <p>22 a different company has a right of first refusal on</p> <p>23 it, you are behind them in line, so to speak, is</p> <p>24 that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 111</p> <p>1 Boyd - examination/Chen</p> <p>2 Q. And you can only get the property if</p> <p>3 the other company turns it down first, is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. So if you're looking at a property and</p> <p>7 a different company has the right of first refusal</p> <p>8 on it, would you ever advise one of your clients</p> <p>9 that they should consider that property --</p> <p>10 A. That wouldn't seem to be an attractive</p> <p>11 option.</p> <p>12 Q. If a company said that it was</p> <p>13 considering a property that a different company had</p> <p>14 a right of first refusal on, would that strike you</p> <p>15 as questionable?</p> <p>16 A. It would, yes.</p> <p>17 MR. BORCHARDT: Thank very much.</p> <p>18 Professor Chen, do you have any</p> <p>19 questions?</p> <p>20 EXAMINATION BY</p> <p>21 PROF. CHEN:</p> <p>22 Q. Have you ever had a client of your own,</p> <p>23 to the best of your recollection, who applied for a</p> <p>24 tax incentive to move to New Jersey over the years?</p> <p>25 A. We requested our fees from New Jersey</p>
<p style="text-align: right;">Page 112</p> <p>1 Boyd - examination/Chen</p> <p>2 over the years but there are specific firms that</p> <p>3 handle, negotiate -- we do not do that.</p> <p>4 PROF. CHEN: Thanks.</p> <p>5 MR. BORCHARDT: That's it, Mr. Boyd.</p> <p>6 Thank you very much. I think your testimony</p> <p>7 is going to be really useful context for</p> <p>8 some other testimony I expect we'll hear</p> <p>9 today. Thank you.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 (The witness was excused.)</p> <p>12 PROF. CHEN: There would be a good</p> <p>13 time to have our lunch break. For those who</p> <p>14 are not from Newark, there are lots of nice</p> <p>15 places to have lunch directly in the</p> <p>16 environs of the law school building and we</p> <p>17 will reconvene at one p.m.</p> <p>18 (Luncheon recess: 12:12 p.m.)</p>	<p style="text-align: right;">Page 113</p> <p>1</p> <p>2 AFTERNOON SESSION</p> <p>3 (1:03 p.m.)</p> <p>4 PROF. CHEN: Now, possibly, the</p> <p>5 delights of Newark have detained some of the</p> <p>6 audience and the morning spectators, but I</p> <p>7 think we should proceed on time. Our next</p> <p>8 witness is Mr. David Lawyer. Mr. Lawyer,</p> <p>9 could you stand up, please, and raise your</p> <p>10 hand.</p> <p>11 D A V I D L A W Y E R , having been first duly</p> <p>12 sworn, was examined and testified as</p> <p>13 follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. WALDEN:</p> <p>16 Q. Good afternoon, Mr. Lawyer, how are</p> <p>17 you?</p> <p>18 A. Very well.</p> <p>19 Q. I have to apologize to you before we</p> <p>20 begin. I didn't realize that step down means the</p> <p>21 chair doesn't move that well. Some of your</p> <p>22 testimony, as you know, we're going to be doing</p> <p>23 slides, so I hope you can see it. Why don't you</p> <p>24 just say and spell your name for the record.</p> <p>25 A. David Lawyer.</p>

<p style="text-align: right;">Page 114</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. Common spelling?</p> <p>3 A. Yes, common spelling. Last name</p> <p>4 L-a-w-y-e-r.</p> <p>5 Q. And you are not a lawyer?</p> <p>6 A. No, I'm not a lawyer.</p> <p>7 Q. Where do you work?</p> <p>8 A. I work at the New Jersey Economic</p> <p>9 Development Authority.</p> <p>10 Q. Are you here voluntarily?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Have you been fully cooperative with</p> <p>13 the Task Force?</p> <p>14 A. Yes.</p> <p>15 Q. And you and I have met before?</p> <p>16 A. Yes, we have.</p> <p>17 Q. Just thank you very much for all your</p> <p>18 cooperation in this. Was there an introductory</p> <p>19 statement that you wanted to read?</p> <p>20 A. I do, yes. So thank you, Mr. Walden.</p> <p>21 Again, my name is David Lawyer and I am the EDA's</p> <p>22 managing director of underwriting. I have been in</p> <p>23 this position since May of 2017, prior to which I</p> <p>24 had worked as the director of credit incentives</p> <p>25 and real estate underwriting.</p>	<p style="text-align: right;">Page 115</p> <p>1 Lawyer - examination/Walden</p> <p>2 My background is in commercial lending</p> <p>3 and credit analysis at various financial</p> <p>4 institutions, and I started working an the EDA in</p> <p>5 2006 as a senior credit underwriter. I understand</p> <p>6 that the purpose of today's hearing is to discuss</p> <p>7 the Task Force review of the Grow New Jersey tax</p> <p>8 incentive program.</p> <p>9 While my personal involvement with the</p> <p>10 program began in 2017, in preparation for today's</p> <p>11 hearing I have reviewed a number of project files</p> <p>12 from the beginning of the program to today. I</p> <p>13 have also spoken with underwriters and business</p> <p>14 development officers and community development</p> <p>15 officers whom I will refer to as BDOs and CDOs, to</p> <p>16 better understand their involvement in certain of</p> <p>17 these projects.</p> <p>18 On behalf of the EDA, I would like to</p> <p>19 thank the Task Force for its work, and to note</p> <p>20 that we welcome this opportunity to improve our</p> <p>21 administration of the Grow program. I would also</p> <p>22 like to note that the EDA is constantly evolving.</p> <p>23 We have in the past couple of years significantly</p> <p>24 improved our oversight of the tax incentive</p> <p>25 programs we manage. Improvements include updating</p>
<p style="text-align: right;">Page 116</p> <p>1 Lawyer - examination/Walden</p> <p>2 the documentation and other requirements we seek</p> <p>3 from program applicants as well as reviewing and</p> <p>4 updating program files after an application has</p> <p>5 already been approved.</p> <p>6 We understand, however, that we need to</p> <p>7 further improve to better serve the taxpayers of</p> <p>8 the State of New Jersey. To that end, we welcome</p> <p>9 comments or recommendations from the Task Force</p> <p>10 and I hope that my testimony today will aid in</p> <p>11 formulating such recommendations. Thank you.</p> <p>12 Q. I'm sure we will. You've been very</p> <p>13 helpful so far, Mr. Lawyer, but can I make one</p> <p>14 suggestion to you, which is just to hold the mike</p> <p>15 toward your mouth so that -- not that you can't be</p> <p>16 heard, but it will be easier. Okay.</p> <p>17 Now, during your opening statement,</p> <p>18 which I thank you for, you used a term that I just</p> <p>19 want to make sure that all of our listeners are</p> <p>20 familiar with. The term was "underwriting" or</p> <p>21 "underwriter."</p> <p>22 A. Yes.</p> <p>23 Q. Could you please describe what that</p> <p>24 means? I know that it's used in many different</p> <p>25 contexts but give us a general understanding of the</p>	<p style="text-align: right;">Page 117</p> <p>1 Lawyer - examination/Walden</p> <p>2 term.</p> <p>3 A. All right, the most general</p> <p>4 description that I can offer is an experienced</p> <p>5 individual having a finance or accounting</p> <p>6 background and specific technical skills who</p> <p>7 completes a detailed analysis, understands the</p> <p>8 logic, and tests the validity of an application</p> <p>9 and all supporting data related to a request for</p> <p>10 financial assistance.</p> <p>11 Q. Okay, that was clear. So in other</p> <p>12 words, in a sense, an underwriter scrubs, dives and</p> <p>13 analyzes to make sure whatever he or she is looking</p> <p>14 at is what it purports to be.</p> <p>15 A. Correct.</p> <p>16 Q. Now, just to frame your testimony, I</p> <p>17 want to make sure everyone understands, essentially</p> <p>18 you're testifying here as kind of a corporate</p> <p>19 witness in the sense that you're not testifying</p> <p>20 about what you personally did during the period of</p> <p>21 time from 2013 to 2017, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And so in preparation for your</p> <p>24 testimony today, you said before you reviewed a</p> <p>25 whole bunch of files, right?</p>

<p style="text-align: right;">Page 118</p> <p>1 Lawyer - examination/Walden</p> <p>2 A. Yes.</p> <p>3 Q. And were they files that we asked to</p> <p>4 you review?</p> <p>5 A. Yes.</p> <p>6 Q. And we've had discussions about your</p> <p>7 findings and the facts in our prior interactions.</p> <p>8 A. Yes, we did.</p> <p>9 Q. And you understand that what I'm really</p> <p>10 asking you about today from the perspective of an</p> <p>11 EDA's expert witness is to help us understand how</p> <p>12 the program was being administered specifically by</p> <p>13 the underwriting department in the period between</p> <p>14 2013 and 2017.</p> <p>15 A. I understand.</p> <p>16 Q. Okay, good. So at a high level, from</p> <p>17 the underwriter's perspective, when he or she gets</p> <p>18 a file, give us a very brief description of what's</p> <p>19 happened with an application before. And we're</p> <p>20 going to use a slide that we worked on together,</p> <p>21 and note for the record that this is Task Force</p> <p>22 exhibit, somebody help me here? Six. Six now.</p> <p>23 There's a 6 and 6A.</p> <p>24 REC'D (Task Force Exhibit 6A, slide re</p> <p>25 underwriting and approval process, received</p>	<p style="text-align: right;">Page 119</p> <p>1 Lawyer - examination/Walden</p> <p>2 in evidence, as of this date.)</p> <p>3 Q. So why don't you walk through, I want</p> <p>4 you to start with the process that begins before</p> <p>5 the underwriter and then we'll go from there.</p> <p>6 A. Absolutely. And so what we have</p> <p>7 behind me is what I would classify as a pretty</p> <p>8 good visual illustration of what departments</p> <p>9 within the EDA touches Grow applications, from</p> <p>10 initial application, approval, board approval and</p> <p>11 post-closing processes or post-approval processes,</p> <p>12 all Grow applications that begin within our</p> <p>13 business development team. A business development</p> <p>14 officer, which again, I would refer to as a BDO,</p> <p>15 is the primary point of contact in the beginning</p> <p>16 of the application process.</p> <p>17 In many instances, an officer from the</p> <p>18 state's Business Action Center may have been in</p> <p>19 contact with the Grow applicant prior to our BDO</p> <p>20 getting the ball. Should that be the case, both</p> <p>21 individuals, they will work together towards the</p> <p>22 completion of a Grow application. It is the BDO's</p> <p>23 responsibility to meet with the applicant and</p> <p>24 understand the project, confirm that the Grow</p> <p>25 project is in fact the appropriate method to</p>
<p style="text-align: right;">Page 120</p> <p>1 Lawyer - examination/Walden</p> <p>2 assist the business, and that the scope of the</p> <p>3 project agrees with the eligibility criteria</p> <p>4 that's spelled out in the law.</p> <p>5 The BDO's method to understand the</p> <p>6 project prior to application includes meeting the</p> <p>7 applicant at the New Jersey site; if within a</p> <p>8 reasonable driving distance, a site visit to the</p> <p>9 out-of-state location, and reviewing all available</p> <p>10 documentation that pertains to the project.</p> <p>11 Ultimately, a complete package</p> <p>12 consisting of an executed Grow application,</p> <p>13 application fee, and all required documentation is</p> <p>14 signed off by the business development department</p> <p>15 and submitted to my department, underwriting, to</p> <p>16 commence the analysis.</p> <p>17 And so that takes us to the second</p> <p>18 item, "Underwriting." And so the complete</p> <p>19 application package is then assigned to an</p> <p>20 underwriter.</p> <p>21 And this individual will live with the</p> <p>22 application throughout the entire underwriting</p> <p>23 process. The BDO remains actively engaged and</p> <p>24 collectively we refer to the two as the deal team.</p> <p>25 Q. I'm sorry, did you say the deal team?</p>	<p style="text-align: right;">Page 121</p> <p>1 Lawyer - examination/Walden</p> <p>2 A. Deal team. Yes. Underwriting then</p> <p>3 completes a financial review of the project. This</p> <p>4 includes the completion of a net benefit analysis,</p> <p>5 the award calculation, financial feasibility</p> <p>6 analysis, and cost/benefit analysis.</p> <p>7 Finally, the underwriter completes what</p> <p>8 is called a project summary, which essentially</p> <p>9 pulls all the analysis together in a public</p> <p>10 document that is submitted to the EDA board for</p> <p>11 approval. And then we have the board approval,</p> <p>12 and then the last step which is not up there, but</p> <p>13 it's well to the right of board approval, is</p> <p>14 post-approval.</p> <p>15 Once the project has been approved,</p> <p>16 what we refer to as an approval letter that</p> <p>17 outlines the details of the approval is drafted by</p> <p>18 a separate closing department at the EDA, signed</p> <p>19 off by the state's deputy Attorney General's</p> <p>20 office, which I will refer to as the D.A.G., or an</p> <p>21 A.G., reviewed by EDA staff, signed by me, and</p> <p>22 then sent to the applicant for execution.</p> <p>23 Our post-closing department ensures the</p> <p>24 return receipt of that approval letter, and they</p> <p>25 live with the project through our final</p>

<p style="text-align: right;">Page 122</p> <p>1 Lawyer - examination/Walden 2 certification and payment of the award over time. 3 And so that takes us to the bottom half of your 4 chart there which provides a good linear 5 illustration of the internal meetings that take 6 place leading up to the EDA board, and -- 7 Q. So in other words, that's the journey 8 on top, and the bottom is how you get there. 9 A. Correct. 10 Q. Go ahead, please describe -- 11 A. You got it. So the first meeting is 12 our incentive pipeline. At our incentive pipeline 13 meeting, all Grow applications preapproval are 14 discussed. Such applications include those that 15 are anticipated to be received by BDO, those 16 applications that have been received and are 17 currently being processed by BDO, and those which 18 have been deemed complete and have been submitted 19 to underwriting for analysis. 20 Each officer assigned to their 21 respective applications will discuss certain 22 particulars about the project such as what it 23 entails, the amount requested, any outstanding 24 items and any significant issues including legal 25 matters.</p>	<p style="text-align: right;">Page 123</p> <p>1 Lawyer - examination/Walden 2 Present at incentives pipeline includes 3 various levels of EDA staff, including senior 4 management, and a member from the A.G.'s office. 5 Should there be any questions regarding how a 6 certain aspect of the application lines up with 7 the law, EDA staff defers to our A.G. for their 8 opinion, and that is the closed-door meeting. 9 The next step of the process is what we 10 call incentive project review. And the purpose of 11 this closed-door meeting is to discuss the draft 12 analyses and attachments that those Grow 13 applications currently in the underwriting 14 department, and we feel we have merit to be heard 15 at the upcoming board meeting. 16 Equally as important is an opportunity 17 to ensure that EDA staff and senior management 18 were all on the same page and agree that the 19 projects discussed are ready to proceed to the 20 next board. 21 Materials distributed to the 22 participants in review, to review in advance of 23 this meeting, include drafts of the project 24 summary, our confidential analysis, net benefit 25 analysis, cost/benefit analysis, there's a</p>
<p style="text-align: right;">Page 124</p> <p>1 Lawyer - examination/Walden 2 confidential CBA verification worksheet which was 3 a process improvement, and a Grow award 4 calculation. 5 Present at incentives project review 6 are the same participants at our pipeline meeting 7 including a member from the A.G.'s office. 8 The next step is our incentive 9 committee, and the purpose of this meeting is to 10 present the same analyses and related attachments 11 discussed at the prior incentive project review to 12 the members of the incentive committee. Present 13 at this meeting are the same participants at 14 project review, including a member from the A.G.'s 15 office and certain members of the EDA board who 16 were selected and agreed to be part of this 17 committee. 18 Unlike project review, the underwriting 19 analyses and attachments at this point are in 20 substantially final form. This is a closed-door 21 meeting to which the committee members, they have 22 the opportunity to ask any questions about any of 23 the projects and express concerns surrounding the 24 same. 25 And then finally we have the EDA board.</p>	<p style="text-align: right;">Page 125</p> <p>1 Lawyer - examination/Walden 2 And finally, at the EDA board, are items 3 recommended for approval by EDA staff and the 4 incentive committee, are considered by the members 5 of the board. The board is a public setting, 6 traditionally at EDA's office. All application 7 materials provided to the incentive committee are 8 also provided to the board members in advance of 9 the meeting to review in support of their 10 respective votes. And at every EDA board meeting 11 a member from the state's A.G. office is present. 12 Q. Thank you, that was a mouthful. It's 13 quite a process, thank you very much. I just want 14 to ask you about three things that I think you 15 talked about, and I'd like to you just describe it 16 as simply as you can, so that even a layperson can 17 understand. 18 Can you just explain what a net benefit 19 analysis means? 20 A. Right. So the net benefit analysis is 21 essentially -- it is an estimate of the 22 incremental tax revenue the state will receive 23 that will result from a specific type of project 24 located in a certain part of the state that will 25 also result in employment activity. And so it</p>

<p style="text-align: right;">Page 126</p> <p>1 Lawyer - examination/Walden 2 takes into consideration revenues that the state 3 was not realizing before that is going to result 4 from this new capital investment, business 5 activity related from that capital investment, as 6 well as new employment and tax revenues generated 7 from new employees at that location. 8 Q. So in other words, if I could make it 9 even more simple, is it just a way to measure how 10 good or not a deal is for the state? 11 A. Yes, that is one way to say it, yes. 12 Q. And then you also mentioned something 13 called a cost/benefit analysis. 14 A. Yes. 15 Q. If I can lead you just in the interests 16 of time, is that basically a way to determine 17 whether or not the out-of-state location is more or 18 less expensive than the Camden alternative? 19 A. Yes. 20 Q. Or the alternative in any locality in 21 Jersey. 22 A. Yes. 23 Q. There's one document I want to make 24 sure that I cover with you, to figure out where 25 along that stage this is generated. Is there</p>	<p style="text-align: right;">Page 127</p> <p>1 Lawyer - examination/Walden 2 something called a confidential memo of analysis? 3 A. Yes. 4 Q. What is that? 5 A. So that -- that analysis has a lot of 6 the same information that's on the project 7 summary. But there, we also get into the 8 financial feasibility of the project. And so that 9 involves not a deep dive, but we review certain 10 aspects of the financial statements of the 11 applicant. And so that illustrates a number of 12 areas of the financial statements, certain aspects 13 of it, certain financial ratios; and so since 14 we're pulling that information which likely could 15 be a private company, we really don't want that to 16 be on a public document. We do not want 17 confidential information to be on a public 18 document. 19 Q. But is that confidential memo of 20 analysis something that goes to the board as part 21 of the board package? 22 A. I believe the board members received 23 that, but it is not posted on our website as the 24 public agenda. 25 Q. Is the information that is contained in</p>
<p style="text-align: right;">Page 128</p> <p>1 Lawyer - examination/Walden 2 that confidential memo of analysis based on 3 information provided by applicants and verified by 4 the underwriters and others? 5 A. Yes. 6 Q. And is the information that's in those 7 confidential memos of analysis, it's supposed to be 8 truthful. 9 A. Absolutely. 10 Q. And is it fair to say that part of the 11 job of the underwriter is to verify that the 12 information contained in the applications is 13 confirmed, true, and that there are no red flags? 14 A. Correct. 15 Q. And so in circumstances where 16 information in the application seems questionable 17 or suspicious, what is the underwriter's role? 18 A. They will question it. 19 Q. And then to what end? 20 A. Until they receive a satisfactory 21 response. 22 Q. And if in the course of work, an 23 underwriter, again during this period from 2013 to 24 2017, could not satisfy him or herself of an 25 important piece of information, what would</p>	<p style="text-align: right;">Page 129</p> <p>1 Lawyer - examination/Walden 2 generally happen in those circumstances? 3 A. Well, it may begin with a phone call 4 or an e-mail to call out the item that the 5 underwriter has an issue with. And then an 6 explanation may be provided, which may result in 7 the request of additional information to review in 8 support of the response that was provided. 9 Q. I apologize. My question was probably 10 not crisp enough, so let me try it again. 11 Once the questions are asked and once 12 the applicant provides whatever the applicant has, 13 if at that point the underwriter still has a 14 question or concern that's not resolved internally, 15 can you just help us understand what happens next? 16 What's the underwriter supposed to do if actually 17 he can't or she can't get the question resolved to 18 their satisfaction? 19 A. I think it really depends on what that 20 issue is. If it's an issue that can impair the 21 eligibility of the project, then that could lead 22 us down a different path to where the project is 23 no longer eligible. If it's a question that we 24 feel should be answered, that may lead to the 25 project being held for a period of time until we</p>

<p style="text-align: right;">Page 130</p> <p>1 Lawyer - examination/Walden 2 get resolution. 3 It may be a question that we feel is so 4 important because it impacts the eligibility, but 5 really for us to understand the project, and to be 6 consistent with other, similar projects that we 7 have reviewed in the past, again, that project may 8 be held until we receive an acceptable response. 9 Q. Okay. So I'm going to ask you a little 10 bit about your observations about the training 11 program at the EDA; but before I do, I just want to 12 make sure I'm past this. 13 When an underwriter gets the file, 14 obviously the Internet is a ready source of 15 information that is available to an underwriter or 16 to a BDO. Is that part of the process for the 17 underwriter to do some level of diligence, of using 18 resources like the Internet? 19 A. Yes. 20 Q. And on the Internet, is it fair to say 21 for example, you might be able to find prior 22 statements that the applicant made about their 23 intent to either stay in or leave New Jersey? 24 A. Correct. 25 Q. And you might find information about</p>	<p style="text-align: right;">Page 131</p> <p>1 Lawyer - examination/Walden 2 prior lawsuits that might be relevant to some of 3 the questions about litigation in the application. 4 A. Yes. 5 Q. And you might find information that 6 bears on whether or not the company is suitable 7 from a business integrity perspective -- 8 A. Correct. 9 Q. -- for example, you might find 10 regulatory violations. 11 A. Yes. 12 Q. And do underwriters, again, you're 13 answering based on your understanding of the way 14 the process works from 2013 to 2017, do 15 underwriters generally look for those matters? 16 A. Yes. 17 Q. Now, again, I'm going to ask you about 18 this same period of time from 2013 to 2017. Are 19 you aware of whether or not in that period of time, 20 there was ever a formal training process within the 21 EDA to help underwriters actually understand all 22 the program requirements? 23 A. Not that I know of. 24 Q. Was there any sort of formal class 25 where a lawyer came in, for example, and said,</p>
<p style="text-align: right;">Page 132</p> <p>1 Lawyer - examination/Walden 2 "Here's what the statute requires"? 3 A. Not that I'm aware of. 4 Q. Is there any sort of, maybe, online 5 training that happens from time to time where 6 underwriters get updated on new areas of concern or 7 places where people are consistently experiencing 8 problems? 9 A. Not that I'm aware of. 10 Q. So again, just so we're clear, no 11 formal training at all? 12 A. No. 13 Q. Do you think -- we talked about 14 recommendations before -- do you think that it 15 would be a better process and make it easier on 16 underwriters if there actually was a formal 17 training program? 18 A. I can see value in that, yes. 19 Q. And would there also be value in yearly 20 recertification to explain developments in the 21 program, new regulations and amendments and those 22 sort of compliance refreshers? 23 A. I see the value in ongoing training, 24 but as far as a specific certification -- 25 Q. I'm sorry, I didn't mean certification</p>	<p style="text-align: right;">Page 133</p> <p>1 Lawyer - examination/Walden 2 in that way. I just mean an ongoing training on a 3 yearly basis so if there are any changes in the law 4 or the regulations, the underwriters actually get 5 some formal process to understand. 6 A. I see value. 7 Q. And to ask questions, for example. 8 A. Yes. 9 Q. So let me just ask you a question, make 10 sure that we understand. 11 At some point when you started in May 12 of '17, you did something to help familiarize 13 yourself, given the fact that there wasn't formal 14 training program even then. 15 A. Correct. 16 Q. What did you do so that you were 17 familiar with the Grow program? 18 A. Right. So the very first thing I did 19 was to review, study and understand as best I can 20 the act and the rules. From there, you really 21 just need to immerse yourself into the process, 22 which -- which actually was an existing process at 23 the EDA for our loan programs. 24 And so when the underwriting department 25 took over the approval process for Grow</p>

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2 applications, it would make complete logical sense
3 to follow that same process as well.

4 Q. Okay. Please, go ahead.

5 A. All right. So I took it upon myself
6 to make sure that on almost a daily basis I would
7 sit with an underwriter to discuss what projects
8 they were working, what were their observations,
9 what works, what does not work, are there any
10 areas that they felt may be improved. That was my
11 way to understand what was the existing process.

12 I made it clear to everyone in the
13 earlier parts of the 2017, and May of 2017, that
14 my intent isn't to come in and make vast changes
15 immediately. I felt as a good leader it's best to
16 understand what are the processes, the current
17 processes, and then once I'm able to get my arms
18 around it, look for areas -- look for
19 opportunities to improve, which ultimately we did.

20 Q. So now that we've talked about kind of
21 your experience when you got in, I'm now going to
22 go back to the questions I was asking before about
23 the period between 2013 and May of 2017.

24 But before I do that, let me just ask
25 you to make sure I understand. The Grow program,

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2 so everyone is clear, is it fair to say that's
3 designed to create new jobs, retain new jobs, or
4 encourage capital investments?

5 A. Correct.

6 Q. And it gives tax incentives if
7 companies do one or more of those things?

8 A. Yes.

9 Q. And for companies that were, at the
10 time of their application, they were already in New
11 Jersey, does every Grow applicant need to show that
12 the jobs were at risk, as the program was
13 administered, does every applicant have to show
14 that the jobs were at risk of moving out of the
15 state?

16 A. That is my understanding.

17 Q. And is that true even where an
18 application proposes to move jobs intrastate from a
19 city outside of Camden to Camden?

20 A. That is my understanding, yes.

21 Q. Does the EDA, did the EDA during this
22 period, again, as part of its administration,
23 require the submission of proof regarding the out
24 of state location?

25 A. Yes.

1 Lawyer - examination/Walden
2 Q. And before I talk about the kinds of
3 proof that you found that the EDA was accepting,
4 let me just ask you, as a general matter, did the
5 EDA require that the location be bona fide?

6 A. Yes.

7 Q. Did the EDA require that the location
8 be suitable for business?

9 A. Yes.

10 Q. And did the EDA require that the
11 location be available?

12 A. Yes.

13 Q. Now, if you would, what kinds of proof
14 did you find that the EDA was either accepting or
15 asking for as a proxy for those -- those issues?

16 A. Primarily letters of intent.

17 Q. Can we refer to those generally as
18 LOIs?

19 A. LOIs.

20 Q. Okay. So I'm sure that the LOIs come
21 in various shapes and sizes but could you just give
22 the people who are listening a brief explanation of
23 your understanding what an LOI is.

24 A. In other words, it's a terms sheet.
25 It's someone who has the actual asset. They are

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2 making an offer on, this is what they may be
3 willing to provide you to meet your need in
4 whatever project that you have.

5 Q. And would it be the underwriter's
6 expectation that the company actually did diligence
7 to make sure that that location was suitable?

8 A. Yes.

9 Q. And that the location was available?

10 A. Yes.

11 Q. And if the location didn't seem
12 suitable or available, or bona fide, fair to say
13 that the underwriter would ask more questions and
14 ask for more documents?

15 A. Correct.

16 Q. And did, in your estimation or based on
17 your experience, does the underwriter have the
18 authority to ask for underlying business records,
19 "Show me the business plans for why this site is
20 suitable," for example?

21 A. Right, generally speaking the
22 underwriter can ask for any additional information
23 they deem in support of that alternative location
24 that they questioned an LOI.

25 Q. And if there was a circumstance, as a

<p style="text-align: right;">Page 138</p> <p>1 Lawyer - examination/Walden</p> <p>2 hypothetical question, if there was a circumstance</p> <p>3 where a company made a submission of an</p> <p>4 out-of-state location and the underwriter</p> <p>5 determined that it was a phantom location, for</p> <p>6 example, that it was not a bona fide location, what</p> <p>7 impact could that have on that particular</p> <p>8 application?</p> <p>9 A. It could be declined.</p> <p>10 Q. All right. So I'm going to ask you to</p> <p>11 look at tab 1 of your binder.</p> <p>12 A. Okay.</p> <p>13 Q. Now, did you, fair to say that we</p> <p>14 showed you this document before your testimony</p> <p>15 today?</p> <p>16 A. Yes.</p> <p>17 Q. Is this a chart that represents 31</p> <p>18 companies?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And are those 31 companies all of the</p> <p>21 companies that you're aware of between the start of</p> <p>22 the Grow program and presently, that applied to</p> <p>23 retain jobs -- to retain or to move jobs to Camden</p> <p>24 from within the state?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 139</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. And based on your work, is that chart</p> <p>3 accurate and complete?</p> <p>4 A. It is.</p> <p>5 Q. And of the 31 companies, is it fair to</p> <p>6 say that 30 of them according to their application</p> <p>7 indicated an intention to either move to Camden or</p> <p>8 to move to an out-of-state location?</p> <p>9 A. Yes.</p> <p>10 Q. And is it fair to say that the one</p> <p>11 company that doesn't fall in the 30 was going to</p> <p>12 eliminate jobs in Camden?</p> <p>13 A. Correct.</p> <p>14 Q. You can shut that now, I'll --</p> <p>15 MR. WALDEN: -- does anyone know the</p> <p>16 exhibit number this this? I'm going to deem</p> <p>17 this as previously -- we're going to call</p> <p>18 this 9.</p> <p>19 REC'D (Task Force Exhibit 9, chart</p> <p>20 showing data re 31 companies, received in</p> <p>21 evidence, as of this date.)</p> <p>22 Q. I'm going move on to the next subject</p> <p>23 but I want to ask you a little bit about the timing</p> <p>24 of the applications.</p> <p>25 Is it fair to say that the applications</p>
<p style="text-align: right;">Page 140</p> <p>1 Lawyer - examination/Walden</p> <p>2 were very complex?</p> <p>3 A. Very, yes.</p> <p>4 Q. And even at the initial stages for the</p> <p>5 BDO's work, the business development officer, does</p> <p>6 it take quite sometime for the business officer to</p> <p>7 gather up the information and make sure that he or</p> <p>8 she is comfortable with the level of documentation</p> <p>9 in the file?</p> <p>10 A. It can, yes.</p> <p>11 Q. And is it fair to say that the BDOs,</p> <p>12 the expectation that the underwriter is going to</p> <p>13 have is that once the BDO passes it off, most of</p> <p>14 the questions are already answered in the file?</p> <p>15 A. Well, most -- most of the information</p> <p>16 is contained in the file, yes.</p> <p>17 Q. That's what -- I'm sorry, most of the</p> <p>18 information --</p> <p>19 A. Correct.</p> <p>20 Q. So an underwriter's job is hopefully,</p> <p>21 if all the information is there, then you can do</p> <p>22 the deep dive and analyze it.</p> <p>23 A. Correct.</p> <p>24 Q. And verify it or vet it.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. So that whole timeline that you talked</p> <p>3 about, is that something that generally can occur</p> <p>4 in a couple of weeks or a month?</p> <p>5 A. I have not seen that.</p> <p>6 Q. How quickly, what's the average time</p> <p>7 that you think an average application takes to go</p> <p>8 from the business development stage to the board</p> <p>9 approval stage?</p> <p>10 A. I would say a fair assessment is</p> <p>11 anywhere between four to nine months. It could be</p> <p>12 more, it could be less.</p> <p>13 Q. Nine being ones that what, what would</p> <p>14 put an application at the back end of the time</p> <p>15 scale?</p> <p>16 A. It could be various. Sometimes if the</p> <p>17 application is not complete on the business</p> <p>18 development side, and they are working on</p> <p>19 obtaining information, it's just a play on time to</p> <p>20 receive everything that they need.</p> <p>21 Or it could be a question that was</p> <p>22 either posed during the business development</p> <p>23 period or the underwriting process that prolongs</p> <p>24 the approval process. We're waiting on additional</p> <p>25 information.</p>

<p style="text-align: right;">Page 142</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. Okay. Now, is it fair to say that,</p> <p>3 prior to coming here today, I asked you to review</p> <p>4 five applications?</p> <p>5 A. Yes.</p> <p>6 Q. And I asked to you review the project</p> <p>7 files for those five applications.</p> <p>8 A. Yes.</p> <p>9 Q. And is it fair to say that that that</p> <p>10 includes -- I'm sorry, I'm only going to ask you</p> <p>11 about four of the applications. Is it fair to say</p> <p>12 that that includes Connor Strong Buckelew, The</p> <p>13 Michaels Organization --</p> <p>14 A. Yes.</p> <p>15 Q. -- NFI Industries --</p> <p>16 A. Yes.</p> <p>17 Q. -- and Cooper Health?</p> <p>18 A. Yes.</p> <p>19 Q. And did I also ask you whether or not</p> <p>20 you could speak to the BDO and the underwriter on</p> <p>21 those files to make sure that you were familiar</p> <p>22 with the relevant issues?</p> <p>23 A. Yes.</p> <p>24 Q. I'm going to first ask you about the</p> <p>25 applications for Connor Strong, The Michaels</p>	<p style="text-align: right;">Page 143</p> <p>1 Lawyer - examination/Walden</p> <p>2 Organization, and NFI.</p> <p>3 A. Okay.</p> <p>4 Q. Did the BDO describe to you that she</p> <p>5 had a general process for how she went about her</p> <p>6 work?</p> <p>7 A. Yes.</p> <p>8 Q. And is it fair to say that that process</p> <p>9 began with a preliminary step of diligence?</p> <p>10 A. Yes.</p> <p>11 Q. Describe what she said in terms of what</p> <p>12 that step of diligence was.</p> <p>13 A. So part of it is to complete a Google</p> <p>14 search on the applicant; specifically, to look for</p> <p>15 any legal items and also, to have a conversation</p> <p>16 with the applicant to ensure that she understands</p> <p>17 the project. And then ultimately, to start</p> <p>18 gathering information to ensure that the</p> <p>19 application package is complete when it's</p> <p>20 submitted to underwriting.</p> <p>21 Q. Now, according to the BDO, did she</p> <p>22 actually perform this preliminary step of diligence</p> <p>23 on these three applications, Connor Strong, NFI and</p> <p>24 TMO?</p> <p>25 A. She did, yes.</p>
<p style="text-align: right;">Page 144</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. So I want you to just look at slide 3</p> <p>3 for a second and, you know, just summarize slide 3.</p> <p>4 Is it fair to say that each of the applications was</p> <p>5 for a Grow New Jersey award?</p> <p>6 A. Yes.</p> <p>7 Q. Is it fair to say that they were all</p> <p>8 filed on October 24th of 2016?</p> <p>9 A. Yes.</p> <p>10 Q. And each company indicated in its</p> <p>11 application that it was considering a move to</p> <p>12 Philadelphia?</p> <p>13 A. Yes.</p> <p>14 Q. And each of the companies was</p> <p>15 represented by the same consultant?</p> <p>16 A. Yes.</p> <p>17 Q. And who was the consultant?</p> <p>18 A. Kevin Sheehan.</p> <p>19 Q. I just want you to know just for the</p> <p>20 sake of your reference, that if you need to refer</p> <p>21 to the applications at any time, that they are tabs</p> <p>22 2, 3 and 4 of the binder.</p> <p>23 A. Okay.</p> <p>24 Q. So first of all I'm going to ask you</p> <p>25 about a specific article that was discoverable with</p>	<p style="text-align: right;">Page 145</p> <p>1 Lawyer - examination/Walden</p> <p>2 respect to Google, understanding that the</p> <p>3 application was submitted on October 24th of 2016.</p> <p>4 So in order to ask that question, can you go to tab</p> <p>5 5 of your binder.</p> <p>6 A. Okay.</p> <p>7 Q. Can you describe was in tab 5?</p> <p>8 A. It's an article in the Philadelphia</p> <p>9 Inquirer titled, "Plans Announced For Vast New</p> <p>10 Development on Camden Waterfront."</p> <p>11 Q. I'm sorry, what is the date of the</p> <p>12 article?</p> <p>13 A. September 24th, 2015.</p> <p>14 Q. So a little bit more than a year before</p> <p>15 the applications were filed.</p> <p>16 A. That is correct.</p> <p>17 Q. Now, did you see any indication in the</p> <p>18 file that BDO or the underwriter found this</p> <p>19 document?</p> <p>20 A. No.</p> <p>21 Q. Prior to your testimony today, did you</p> <p>22 have an opportunity to review this document?</p> <p>23 A. Yes.</p> <p>24 Q. And does it raise a question or a</p> <p>25 concern for you?</p>

<p style="text-align: right;">Page 146</p> <p>1 Lawyer - examination/Walden</p> <p>2 A. It does.</p> <p>3 Q. Could you explain it to us.</p> <p>4 A. Sure. So in the article, I'm not</p> <p>5 going to use names, I assume --</p> <p>6 Q. Yes.</p> <p>7 A. -- so in the article it makes</p> <p>8 reference to Mr. George Norcross, head of Cooper</p> <p>9 University Hospital board, that his insurance</p> <p>10 firm, Connor Strong & Buckelew, is considering</p> <p>11 moving its headquarters into the development.</p> <p>12 Other companies expected to join include the</p> <p>13 Archer & Greiner PC law firm which has offices in</p> <p>14 Haddonfield, New Jersey, and Philadelphia and</p> <p>15 Cherry Hill, supply chain company NFI Industries,</p> <p>16 and The Michaels Organization, a Cherry Hill</p> <p>17 housing company that has done work in Camden.</p> <p>18 And so from reading this, one can</p> <p>19 glean, have they already -- have they already made</p> <p>20 a decision as far as their New Jersey location.</p> <p>21 Q. So you don't know that, this is a</p> <p>22 question --</p> <p>23 A. Right, this is a question that</p> <p>24 comes --</p> <p>25 Q. -- there might be a completely</p>	<p style="text-align: right;">Page 147</p> <p>1 Lawyer - examination/Walden</p> <p>2 legitimate explanation that they are choosing</p> <p>3 another site in Philadelphia.</p> <p>4 A. Yes.</p> <p>5 Q. And in fairness, each of the companies</p> <p>6 actually submitted LOIs, letters of intent, for</p> <p>7 locations in Philadelphia, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So I'm going to ask you some questions</p> <p>10 about the proposed out-of-state locations for each,</p> <p>11 and then after I ask you the factual questions, I</p> <p>12 just want to make sure that everyone has a common</p> <p>13 understanding of the facts, then I'm going to go</p> <p>14 and ask you some questions about the significance</p> <p>15 of those facts again, just from an underwriting</p> <p>16 perspective, do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. So again, each of these applicants</p> <p>19 submitted real estate proposals for commercial</p> <p>20 spaces in Philadelphia to substantiate the risk</p> <p>21 that the jobs at their companies could move out of</p> <p>22 state.</p> <p>23 A. Yes.</p> <p>24 Q. So what you see behind you, again, I</p> <p>25 apologize that you don't have a chair that spins,</p>
<p style="text-align: right;">Page 148</p> <p>1 Lawyer - examination/Walden</p> <p>2 but if it's easier for you, if you want to walk</p> <p>3 around and look at it while you point the</p> <p>4 microphone at the screen, that's fine --</p> <p>5 A. No, it's --</p> <p>6 Q. -- okay, you're good. So you're</p> <p>7 familiar with this chart, we've talked about it</p> <p>8 before, correct?</p> <p>9 A. Yes.</p> <p>10 Q. So tell me if I'm explaining it</p> <p>11 correctly, and anything else you want to add.</p> <p>12 A. Okay.</p> <p>13 Q. It's organized for each of the three</p> <p>14 companies, and each of them has a proposal 1 and a</p> <p>15 proposal 2. And there is a row for the date of the</p> <p>16 proposal, the total square footage, the floors and</p> <p>17 the basement. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you've had an opportunity to review</p> <p>20 these LOIs prior to your testimony today.</p> <p>21 A. Correct.</p> <p>22 Q. And so again, in the interests of time,</p> <p>23 do you mind if I just lead you through the</p> <p>24 information since you've already verified that the</p> <p>25 information we're going to populate here is</p>	<p style="text-align: right;">Page 149</p> <p>1 Lawyer - examination/Walden</p> <p>2 correct?</p> <p>3 A. That's fine.</p> <p>4 Q. So before I do that, let me just get</p> <p>5 the addresses down. Is it fair to say that the</p> <p>6 address that Connor Strong & Buckelew was</p> <p>7 considering, was it 1601 Market Street in the City</p> <p>8 of Philadelphia?</p> <p>9 A. Yes.</p> <p>10 Q. Is it fair to say that the address for</p> <p>11 NFI was 1500 Spring Garden Street in the City of</p> <p>12 Philadelphia?</p> <p>13 A. Yes.</p> <p>14 Q. Was the address for The Michaels</p> <p>15 Organization the same or different than the address</p> <p>16 that NFI had proffered?</p> <p>17 A. The same.</p> <p>18 Q. Now, again, based on your discussion</p> <p>19 with the underwriter, is it fair to say that, after</p> <p>20 the underwriter reviewed the first set of</p> <p>21 proposals, which we'll get to the details in a</p> <p>22 minute, he knows the problem?</p> <p>23 A. Yes.</p> <p>24 Q. And what was the problem?</p> <p>25 A. It was the length of time between the</p>

<p style="text-align: right;">Page 150</p> <p>1 Lawyer - examination/Walden 2 proposal 1 and proposal 2, and I believe a 3 difference in the square footage. 4 Q. I'm sorry, the underwriter -- again, 5 sorry if I'm going to lead you a little bit on 6 this, is it fair to say that the underwriter 7 noticed that the LOIs were expired? 8 A. Yes. 9 Q. When I say expired, do you understand 10 that to mean that the proposals are no longer 11 available? 12 A. Correct. One can make that 13 interpretation, yes. 14 Q. And is it fair to say that the 15 proposals according to what the underwriter found, 16 the proposals for each of these companies, Connor 17 Strong, NFI and The Michaels Organization, had 18 actually expired before the applications were even 19 submitted? 20 A. That's right. 21 Q. In your experience, is that unusual? 22 A. I would -- yes, it's unusual. 23 Q. Why? 24 A. Because it casts doubt on whether that 25 site is available.</p>	<p style="text-align: right;">Page 151</p> <p>1 Lawyer - examination/Walden 2 Q. Okay. So why don't we just go 3 through -- hold on one second, I think I'm going to 4 skip some questions in the interests of time -- 5 okay. Let me just ask this question, just, again, 6 to speed things up: 7 Is it fair to say that based on your 8 file review, when the underwriter determined that 9 the initial LOIs had lapsed, had expired, he made a 10 specific request of the consultant or the lawyer or 11 lobbyist, whatever, that was representing each of 12 these three companies -- 13 A. Yes. 14 Q. -- and was the request for them to 15 extend the LOI? 16 A. Yes. 17 Q. And why would the underwriters use a 18 word like that, to "extend the LOI" that already 19 existed? 20 A. To ensure that the same datapoints on 21 that original LOI still exist in the future. 22 Q. Is that also a recognition of the 23 underwriter's perspective that this is an address 24 that they vetted before, that they have determined 25 is suitable, that they have done some research on</p>
<p style="text-align: right;">Page 152</p> <p>1 Lawyer - examination/Walden 2 to make sure it will meet their company's needs? 3 A. Correct. 4 Q. Okay. And is it fair to say that, 5 based on your review of the file, this individual 6 that was handling these applications, and again, 7 I'll just use his name, Mr. Sheehan, Mr. Sheehan 8 actually did not get extensions for the LOIs that 9 were originally filed but expired. 10 A. That's right. 11 Q. Is it fair to say that he essentially 12 got new LOI's for similar space but that had 13 differences? 14 A. Yes. 15 Q. And did he do that immediately or did 16 some number of months pass? 17 A. It took some time. 18 Q. So now, I'd like to just go through and 19 populate the chart, okay? So do I understand 20 correctly that the first Connor Strong & Buckelew 21 proposal was dated on August 29th of 2016? 22 A. That's correct. 23 Q. And it had roughly 153,345 square feet 24 of space in the lease proposal? 25 A. Yes.</p>	<p style="text-align: right;">Page 153</p> <p>1 Lawyer - examination/Walden 2 Q. And again, is that an indicator that 3 that's what Connor Strong believes it needs for its 4 operations? 5 A. Yes. 6 Q. And it was on floors 3 through 7 and 11 7 and 12? 8 A. Yes. 9 Q. And the square footage was \$25.95 a 10 retail square foot. 11 A. Yes. 12 Q. Okay. Now, let's go to proposal 2. 13 Proposal 2 was submitted on December 1st of 2016. 14 A. Yes. 15 Q. So that's, if the LOI's had expired, if 16 you remember, was it September 9th of 2016? 17 A. Right. 18 Q. So there was approximately a 19 three-month gap? 20 A. Yes. 21 Q. And the space on this one dropped from 22 153,000 square feet, roughly, to approximately 23 110,000 square feet. 24 A. That's correct. 25 Q. And the floors changed slightly in the</p>

<p style="text-align: right;">Page 154</p> <p>1 Lawyer - examination/Walden</p> <p>2 sense that it's still 3 through 7, but now instead</p> <p>3 of 11 and 12, it was for 13?</p> <p>4 A. Correct.</p> <p>5 Q. And the square footage, despite the</p> <p>6 differences in the space, the square footage -- I</p> <p>7 mean, the base rents stayed the same?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Again, we're going to come back</p> <p>10 to the significance of this at the end. But let's</p> <p>11 go to NFI, if we can have that first NFI.</p> <p>12 Fair to say that, like the Connor</p> <p>13 Strong, it was submitted on August 29th of 2016?</p> <p>14 A. Yes.</p> <p>15 Q. It was a little bit more than 103,000</p> <p>16 square feet?</p> <p>17 A. Correct.</p> <p>18 Q. And it was all on the second floor?</p> <p>19 A. Yes.</p> <p>20 Q. And it was \$23 a retail square foot.</p> <p>21 A. Yes.</p> <p>22 Q. Hold on one second.</p> <p>23 (A pause in the proceedings.)</p> <p>24 Q. Okay, if we can go to proposal number</p> <p>25 2, please. So this one was submitted even later</p>	<p style="text-align: right;">Page 155</p> <p>1 Lawyer - examination/Walden</p> <p>2 than the Connor Strong one. It was at the end of</p> <p>3 February of 2017.</p> <p>4 A. Yes.</p> <p>5 Q. And it dropped about ten thousand</p> <p>6 square feet in terms of the square footage?</p> <p>7 A. That's correct.</p> <p>8 Q. It was just a little bit more than</p> <p>9 93,000 square feet?</p> <p>10 A. Yes.</p> <p>11 Q. It was still on the second floor?</p> <p>12 A. Yes.</p> <p>13 Q. And the price break they got for, I</p> <p>14 assume, for the difference was about fifty cents a</p> <p>15 square foot, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So it was 22.50 a retail square foot.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, from the LOI, could you</p> <p>20 determine that the expiration date on this proposal</p> <p>21 was March 24th of 2017?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, I just want to ask you a</p> <p>24 couple of questions before I move on to The</p> <p>25 Michaels Organization about what the underwriter</p>
<p style="text-align: right;">Page 156</p> <p>1 Lawyer - examination/Walden</p> <p>2 did or didn't ask about based on your review of the</p> <p>3 file.</p> <p>4 Did you see any indication in the file</p> <p>5 that the underwriter called out the fact that the</p> <p>6 Connor Strong proposal dropped roughly forty</p> <p>7 thousand square feet in terms of the space that</p> <p>8 they were getting in the second proposal?</p> <p>9 A. Yes.</p> <p>10 Q. You found indication that he asked</p> <p>11 about that change?</p> <p>12 A. No, I'm thinking of a different</p> <p>13 question. So, no, there wasn't, there wasn't any</p> <p>14 indication.</p> <p>15 Q. Did you find any indication in the file</p> <p>16 that he asked about the change in configuration in</p> <p>17 the sense of 11 and 12 having been in the first</p> <p>18 proposal, and floor 13 being in the second?</p> <p>19 A. I do not.</p> <p>20 Q. And for the NFI proposal, did you see</p> <p>21 anything that suggested that the underwriter asked</p> <p>22 about the difference in space dropping from 103,000</p> <p>23 to 93,000?</p> <p>24 A. I do not recall.</p> <p>25 Q. And do you recall the underwriter</p>	<p style="text-align: right;">Page 157</p> <p>1 Lawyer - examination/Walden</p> <p>2 calling out or getting an explanation for why there</p> <p>3 was a new LOI instead of an extension of the old</p> <p>4 LOI?</p> <p>5 A. No, I don't recall.</p> <p>6 Q. Was there any indication in the file</p> <p>7 that the underwriter asks questions about the gap</p> <p>8 in time, you know, how this space could have been</p> <p>9 available if, in the intervening period, they had</p> <p>10 no coverage and the original space wasn't available</p> <p>11 the way it was configured originally?</p> <p>12 A. No.</p> <p>13 Q. So let's then go to The Michaels</p> <p>14 Organization. Fair to say that the date was, the</p> <p>15 original date was just a day after the other two on</p> <p>16 August 30th of 2016?</p> <p>17 A. Yes.</p> <p>18 Q. And is it fair to say that, on this</p> <p>19 one -- well, they had two different options; they</p> <p>20 had an option for 103,491 feet on floor 2, or they</p> <p>21 had an option for 103,710 square feet on floors 1</p> <p>22 through 7.</p> <p>23 A. Yes.</p> <p>24 Q. Now, just to be clear, the 103,491 feet</p> <p>25 on the second floor, that's the same space that had</p>

<p style="text-align: right;">Page 158</p> <p>1 Lawyer - examination/Walden</p> <p>2 originally been offered to NFI with NFI's first</p> <p>3 proposal.</p> <p>4 A. Yes.</p> <p>5 Q. And the base rent was \$23 a square</p> <p>6 foot.</p> <p>7 A. Correct.</p> <p>8 Q. Now, were you able to determine, based</p> <p>9 on the issuance of this letter and the expiration</p> <p>10 date, that this proposal actually, even though it</p> <p>11 was expired, was only good for eleven days?</p> <p>12 A. It was only good for eleven days.</p> <p>13 Q. Is that unusual?</p> <p>14 A. Yes, it is.</p> <p>15 Q. And is it fair to say that with NFI, it</p> <p>16 had a similar problem, it was good for twelve days?</p> <p>17 A. Yes.</p> <p>18 Q. So could you find any indication in the</p> <p>19 file that the underwriter asked about the short</p> <p>20 duration of time that these LOIs were good for?</p> <p>21 A. No, I don't recall that.</p> <p>22 Q. You don't recall. Okay. Let's go</p> <p>23 through TMO, number 2, please, again, submitted on</p> <p>24 the same day as NFI, on February 28th of 2017?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 159</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. Again, a change in the space. It was</p> <p>3 only -- a little bit, almost 96,000 square feet?</p> <p>4 A. Yes.</p> <p>5 Q. And instead of either the second floor</p> <p>6 option or the first and seventh floor option, this</p> <p>7 one was configured where some space was in the</p> <p>8 basement, some space was on the first floor, some</p> <p>9 space was on the seventh floor, and some space was</p> <p>10 on the twelfth floor.</p> <p>11 A. Correct.</p> <p>12 Q. But the price break they got based on</p> <p>13 the change in configuration was the same as the</p> <p>14 price break that NFI got.</p> <p>15 A. Yes.</p> <p>16 Q. For significantly less material changes</p> <p>17 to the configuration.</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, let me just ask you a</p> <p>20 couple of questions, again, based on your review of</p> <p>21 the file.</p> <p>22 Is it fair to say that -- excuse me one</p> <p>23 second.</p> <p>24 (A pause in the proceedings.)</p> <p>25 Q. With respect to the second TMO</p>
<p style="text-align: right;">Page 160</p> <p>1 Lawyer - examination/Walden</p> <p>2 proposal, the one on the basement, the first floor,</p> <p>3 the seventh floor and the twelfth floor, is it fair</p> <p>4 to say that of that space, not all of that square</p> <p>5 footage was actually even available?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know what a ROFR is?</p> <p>8 A. A ROFR?</p> <p>9 Q. Right of first refusal --</p> <p>10 A. Oh, right of -- yes.</p> <p>11 Q. Did that proposal number 2 for The</p> <p>12 Michaels Organization make clear that one of those</p> <p>13 spaces had a tenant that existed already that had a</p> <p>14 right of first refusal on that space?</p> <p>15 A. Yes.</p> <p>16 Q. And is it fair to say that that square</p> <p>17 footage was on the seventh floor and it represented</p> <p>18 approximately 30 percent of the 95,000 square feet?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And could you find anywhere in</p> <p>21 the file that the underwriter asked about the fact</p> <p>22 that some of the space was not available?</p> <p>23 A. No.</p> <p>24 Q. And could you find any evidence in the</p> <p>25 file that the underwriter asked about the</p>	<p style="text-align: right;">Page 161</p> <p>1 Lawyer - examination/Walden</p> <p>2 significant change in configuration?</p> <p>3 A. No.</p> <p>4 Q. And any evidence in the file that the</p> <p>5 underwriter asked about the gap between September</p> <p>6 9th and February 28th?</p> <p>7 A. No.</p> <p>8 Q. Okay. So now that we understand the</p> <p>9 facts, right, let me turn then to kind of the</p> <p>10 significance of those facts. Again, just from the</p> <p>11 perspective of your position now as the manager of</p> <p>12 a department that's supposed to be underwriting to</p> <p>13 the level of standards that you hold, right?</p> <p>14 That's the nature of my questions. I want to be</p> <p>15 clear.</p> <p>16 This is not about the companies, this</p> <p>17 is not about whether there are reasons to explain</p> <p>18 all this. We don't have all the records yet. I'm</p> <p>19 only asking you about whether or not the</p> <p>20 underwriter in your professional judgement should</p> <p>21 have done more; do you understand that?</p> <p>22 A. Got it.</p> <p>23 Q. Okay. Does it raise a concern for you</p> <p>24 that the NFI and TMO proposals, proposal number 1,</p> <p>25 were for such a short duration?</p>

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2 A. It does.

3 Q. And from an underwriting perspective,
4 would that raise a potential that the -- that these
5 proposals, these out-of-state proposals that are
6 the proxy for the jobs being at risk, that these
7 proposals aren't really bona fide?

8 A. They can.

9 Q. And in those circumstances, if you were
10 the underwriter, would you ask more questions?

11 A. I would, yes.

12 Q. Does it raise a concern or question, at
13 least, that the proposals, the first three
14 proposals expired before the applications were ever
15 even submitted?

16 A. Yes.

17 Q. Does that raise, again, the potential
18 that the underwriter should be looking for other
19 indicia that these places are bona fide?

20 A. Correct.

21 Q. And that they are suitable?

22 A. Yes.

23 Q. And that they are available?

24 A. Yes.

25 Q. Does it raise kind of a further

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2 question that there was such a large gap in all of
3 the proposals, but more so in the NFI and TMO ones,
4 there's such a big gap between the first proposal
5 and the second proposal?

6 A. Yes.

7 Q. Again, is that, from an underwriting
8 perspective, is that potential indicia that more
9 questions need to be asked to ensure that this
10 location is bona fide?

11 A. Yes, I would ask more questions.

12 Q. And does the fact that -- and this one
13 I'm really focusing on the TMO -- does the fact
14 that the configuration changed so much raise any
15 further questions or concerns that merit additional
16 questions?

17 A. It does.

18 Q. And the, again, less so with NFI and
19 The Michaels Organization, but more so with the
20 Connor Strong one, does it raise an additional
21 question or concern that there is such a large
22 change in square footage between proposal 1 and
23 proposal 2, requiring the asking of more questions?

24 A. Yes.

25 Q. Again, I just want to note from an

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2 underwriting perspective, the fact that all of the
3 companies were using the same consultant and that
4 two of the companies were intending to locate in
5 the same exact building in Philadelphia, and that
6 they were offering actually the same space in one
7 of the proposals, does that, from an underwriting
8 perspective, does that raise any additional
9 questions or concerns?

10 A. Yes.

11 Q. And I take it in your professional
12 judgement, more questions would be done anyway.

13 A. It would.

14 Q. And from an underwriting perspective,
15 does it raise additional questions or concerns
16 that, with respect to The Michaels Organization, a
17 significant block of the space was not even
18 available?

19 A. Correct.

20 Q. Do you see these issues as serious
21 issues from an underwriting perspective?

22 A. Well, it depends on the responses.

23 Q. Oh, I'm sorry, I should have asked you
24 a question. Based on the totality of the
25 circumstances and the number of changes in the LOIs

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2 and the various issues we've discussed as an
3 underwriter, would your questions in this regard be
4 serious?

5 A. Yes, because I think there's a
6 pattern.

7 Q. Okay. So I'm going to ask you about
8 one more application.

9 A. Okay.

10 Q. And it's the tab 13 and I just ask that
11 you take a look, tell us what application this is.

12 A. Cooper Health System.

13 Q. Now, before I ask these questions, and
14 you know this already but just let me be clear,
15 when I asked you before with respect to the other
16 applications whether or not the underwriter should
17 ask more questions, one of those questions,
18 depending on the oral information that they get, a
19 question about obtaining business records that the
20 company has that are contemporaneous to their
21 evaluation of the sites, to show things like, they
22 were doing site visits at the out-of-state
23 location, they actually had a business plan, there
24 was a spreadsheet that had been created months ago
25 that showed what the relocation and the build-out

<p style="text-align: right;">Page 166</p> <p>1 Lawyer - examination/Walden</p> <p>2 costs should be, that's an option for the</p> <p>3 underwriter, correct?</p> <p>4 A. We lead with the CBA, but if</p> <p>5 additional information is needed to complete the</p> <p>6 analysis, yes, we can ask for additional items,</p> <p>7 which would include some of those items that</p> <p>8 you've mentioned.</p> <p>9 Q. And if -- and again, I'm not -- we</p> <p>10 didn't have all the facts with respect to these</p> <p>11 applications so this is just a question about the</p> <p>12 practice, not these applications; but if, with</p> <p>13 these applications, the underwriter had some</p> <p>14 serious questions about whether the sites were</p> <p>15 suitable, bona fide and available, the underwriter</p> <p>16 has the option to asking for some of the business</p> <p>17 records that I just outlined.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So now we're going to show an</p> <p>20 example where we actually do have business records,</p> <p>21 so you understand that. You said the application</p> <p>22 was for whom?</p> <p>23 A. The Cooper Health System.</p> <p>24 Q. Just looking at the slide just to make</p> <p>25 things easy, it was filed on November 7th of 2014?</p>	<p style="text-align: right;">Page 167</p> <p>1 Lawyer - examination/Walden</p> <p>2 A. Yes.</p> <p>3 Q. And is it fair to say that Cooper was</p> <p>4 intending to, with respect to the Camden option, to</p> <p>5 move its administrative facilities from another</p> <p>6 location to Camden?</p> <p>7 A. Yes.</p> <p>8 Q. And were they going to move into a</p> <p>9 building that was generally referred to as the L-3</p> <p>10 building?</p> <p>11 A. Yes.</p> <p>12 Q. And the company, is it fair to say that</p> <p>13 the company articulated that it was moving its</p> <p>14 offices to Philadelphia?</p> <p>15 A. Yes.</p> <p>16 Q. That was the potential out-of-state</p> <p>17 location?</p> <p>18 A. Yes.</p> <p>19 Q. Is it fair to say they were also</p> <p>20 represented by Kevin Sheehan at Parker McCay?</p> <p>21 A. Yes.</p> <p>22 Q. Is it fair to say that the application</p> <p>23 was approved on December 9th of 2014?</p> <p>24 A. Board approval, yes.</p> <p>25 Q. So we've talked about this from a while</p>
<p style="text-align: right;">Page 168</p> <p>1 Lawyer - examination/Walden</p> <p>2 ago, but that's a month and two days. Before I</p> <p>3 asked you to review this application, had you ever</p> <p>4 seen that in your entire time at the EDA?</p> <p>5 A. Not that I recall.</p> <p>6 Q. And is it fair to say that the amount</p> <p>7 of money awarded with respect to Cooper Health was</p> <p>8 \$40 million over ten years?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whether or not any of that</p> <p>11 money has been paid to date?</p> <p>12 A. I do.</p> <p>13 Q. How much has been paid?</p> <p>14 A. 13,082,000.</p> <p>15 Q. Okay. Now, in reviewing the</p> <p>16 application, did you notice a problem?</p> <p>17 A. There was a question regarding at-risk</p> <p>18 jobs and an alternate location to be determined.</p> <p>19 Q. So can you just turn to, it's in tab</p> <p>20 13. I think it's highlighted for your convenience.</p> <p>21 Can you just, it's up on the screen but God knows</p> <p>22 if anyone has better eyes than me. I can't read</p> <p>23 it. Are you able to read that? Sorry about that.</p> <p>24 We'll read it into the record. Go ahead. Read the</p> <p>25 highlighted section --</p>	<p style="text-align: right;">Page 169</p> <p>1 Lawyer - examination/Walden</p> <p>2 A. Oh, sure. "Are any jobs listed in the</p> <p>3 application at risk of being located outside of</p> <p>4 New Jersey?" And the response is no. "List other</p> <p>5 states New Jersey is in competition with," and the</p> <p>6 answer is TBD, to be determined.</p> <p>7 Q. I want to pause there for one second,</p> <p>8 and I want to turn to tab 15 in the binder.</p> <p>9 Is it fair to say that this is part of</p> <p>10 the application, Mr. Lawyer?</p> <p>11 A. Fifteen?</p> <p>12 Q. No, I'm sorry, I'm asking you a -- this</p> <p>13 is on the application itself.</p> <p>14 A. It is, yes.</p> <p>15 Q. So essentially this is what the CEO</p> <p>16 certified to.</p> <p>17 A. Correct.</p> <p>18 Q. Now, turn to tab 15 in the binder, if</p> <p>19 you will. Do you see that there is highlighted</p> <p>20 language there for your convenience?</p> <p>21 A. Yes.</p> <p>22 Q. Before you get to the highlighted</p> <p>23 language, can you tell everyone what this is?</p> <p>24 A. This is our confidential memorandum of</p> <p>25 analysis.</p>

<p style="text-align: right;">Page 170</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. So is this something that is written by</p> <p>3 EDA staff based on information that's provided by</p> <p>4 the applicant?</p> <p>5 A. That's correct.</p> <p>6 Q. Do I understand correctly that it was</p> <p>7 the general practice that this is the information</p> <p>8 to which the CEO has certified?</p> <p>9 A. Yes.</p> <p>10 Q. So this is essentially information</p> <p>11 that's been sworn.</p> <p>12 A. Correct.</p> <p>13 Q. But again, to be clear, the CEO</p> <p>14 certification that you reviewed was for November,</p> <p>15 not December.</p> <p>16 A. Okay.</p> <p>17 Q. And did you, in any way, find either an</p> <p>18 amended application or an amended CEO</p> <p>19 certification?</p> <p>20 A. No.</p> <p>21 Q. So can you just read the language</p> <p>22 that's highlighted into the record, please?</p> <p>23 A. Sure. "Cooper Health System is</p> <p>24 planning a consolidation of back office operations</p> <p>25 from several locations in Cherry Hill and</p>	<p style="text-align: right;">Page 171</p> <p>1 Lawyer - examination/Walden</p> <p>2 Mt. Laurel, New Jersey into one location in</p> <p>3 Camden, specifically 123,578 square feet in the</p> <p>4 L-3 building. The alternative is to relocate</p> <p>5 these jobs to Philadelphia, PA."</p> <p>6 Q. Can you read the second highlighted</p> <p>7 portion?</p> <p>8 A. "Overall when factoring in both the</p> <p>9 up-front and annual operating costs to operate the</p> <p>10 project, it is estimated that the New Jersey</p> <p>11 location would be \$555,154 more expensive over ten</p> <p>12 years on a net-present-value basis. As a result,</p> <p>13 the company has applied for Grow New Jersey tax</p> <p>14 credits to offset these costs and make New Jersey</p> <p>15 more competitive. Management has indicated that</p> <p>16 the award is a material factor in the company's</p> <p>17 decision to locate the project in New Jersey."</p> <p>18 Q. Okay. So now, if you will -- hold on</p> <p>19 one second.</p> <p>20 (A pause in the proceedings.)</p> <p>21 Q. Let me show you, then, the real estate</p> <p>22 proposal that you found in the file, if you can go</p> <p>23 to tab 16.</p> <p>24 So again, the approval was on December</p> <p>25 9th. Can you tell us the date of the LOI that</p>
<p style="text-align: right;">Page 172</p> <p>1 Lawyer - examination/Walden</p> <p>2 Cooper Health submitted in support of its</p> <p>3 application?</p> <p>4 A. December 5th, 2014.</p> <p>5 Q. And is it the same or different broker</p> <p>6 than the broker on the TMO, NFI and Connor Strong</p> <p>7 LOIs?</p> <p>8 A. It's the same.</p> <p>9 Q. Okay. And if you turn to the second</p> <p>10 page of the document, what is the location, the</p> <p>11 street location that they are considering a move to</p> <p>12 according to this submission?</p> <p>13 A. 1500 Market Street, Philadelphia, PA.</p> <p>14 Q. Do you remember in the file whether you</p> <p>15 found that there was a cover e-mail that submitted</p> <p>16 this document?</p> <p>17 (A pause in the proceedings.)</p> <p>18 Q. Well, why don't you turn to tab 17 and</p> <p>19 see, to the extent you don't remember, if that</p> <p>20 refreshes your recollection.</p> <p>21 A. Yes.</p> <p>22 Q. What is the date of tab 17?</p> <p>23 A. December 5th, 2014.</p> <p>24 Q. So it was submitted to the EDA on the</p> <p>25 very day of the letter being issued by the real</p>	<p style="text-align: right;">Page 173</p> <p>1 Lawyer - examination/Walden</p> <p>2 estate broker.</p> <p>3 A. Right.</p> <p>4 Q. And what's the name of the individual</p> <p>5 who sent this e-mail?</p> <p>6 A. Andrew Bush.</p> <p>7 Q. Now, can you just read the highlighted</p> <p>8 language of the cover e-mail into the record.</p> <p>9 A. "Please find attached a letter of</p> <p>10 intent from a prospective Philadelphia landlord.</p> <p>11 The terms are slightly more aggressive than those</p> <p>12 presented in the cost/benefit analysis, meaning</p> <p>13 that there is more of a burden to Cooper to remain</p> <p>14 in New Jersey."</p> <p>15 Q. Can I ask you a question?</p> <p>16 A. Yes.</p> <p>17 Q. My colleagues have told me that there's</p> <p>18 a live feed, meaning it's being streamed by</p> <p>19 someone, I'm not sure who, and they can't hear you,</p> <p>20 so could you just pull the mike a little closer, or</p> <p>21 get closer to it. Thank you.</p> <p>22 Did you read the highlighted language</p> <p>23 into the record? I got distracted for a second.</p> <p>24 A. I did, yes.</p> <p>25 Q. So let me just ask you some questions</p>

1 Lawyer - examination/Walden
2 about how this works because you've explained it to
3 me before, and I'm not -- I'm still not sure that I
4 understand it. CEO signs a certification on day
5 one.

6 A. Um-hum.

7 Q. On day whatever, one through five
8 months from now, other things are happening, right?
9 There may be changes, I mean, it's not uncommon at
10 all for, in that process, for things to change,
11 right?

12 A. Right.

13 Q. Spaces might be different on different
14 locations. A lot of different things happen.

15 A. Um-hum.

16 Q. Is it usually the case where there are
17 material changes in an application that there's an
18 amended application or an amended CEO certification
19 saying, at the end of the process, "I've now
20 familiarized myself with everything and it's
21 accurate"?

22 A. I don't recall specific events that
23 took place. But I would imagine that if there
24 were material changes to an application and
25 materials that were provided, yes, there was a

1 Lawyer - examination/Walden
2 revised CEO certification that was provided and
3 even a revised application.

4 Q. Okay. But in this circumstance, is it
5 fair to say that for small changes that don't
6 really affect anything, would EDA go through that
7 trouble?

8 A. No.

9 Q. But if there were, again, if you know,
10 because you're talking about a period of time that
11 you didn't have the underwriting pen, you didn't
12 have the department, as its leader, do you know
13 whether or not as a general matter, underwriters
14 were told the CEO certification is backward and
15 forward-looking, it's certifying that it's in the
16 process and, if there are changes, that the CEO is
17 aware of it, and they've got to call out if the
18 CEO, if it's exempted somehow from the
19 certification?

20 A. I'm not familiar with that concept.

21 Q. Do you know of case where is there was
22 a change that was material and that the CEO
23 actually did another certification? Do you know of
24 a circumstance for that happening sitting here
25 today?

1 Lawyer - examination/Walden
2 A. No, I don't know of a specific
3 circumstance but I can imagine that it likely has
4 happened.

5 Q. So remember when we were talking about
6 reforms?

7 A. Yes.

8 Q. Would this be another kind of policy
9 that would be sent to tie down that when there were
10 material changes to an application that might
11 actually affect whether they qualified for their
12 award at all, that the CEO recertified to whatever
13 the new state of facts is?

14 A. Right. One would probably need to
15 define what is meant by "significant change." Any
16 change is left to interpretation, but yes, I think
17 that there's value in it.

18 Q. Okay. Hold on one second.

19 (A pause in the proceedings.)

20 Q. All right. So, excuse me, I'm going to
21 ask you, I just want to unpack this a little bit,
22 right? So we get from -- from November to the
23 approval in December. Is it fair to say that, with
24 respect to this issue, and to the Philadelphia
25 location that was eventually proffered four days

1 Lawyer - examination/Walden
2 before the approval, there were some relevant
3 e-mails that talked about the back-and-forth?

4 A. Yes.

5 Q. So turn to tab 18 if you will. You see
6 that it begins with an e-mail from -- hold on --
7 from Theresa Wells to Andrew Bush, do you see that?

8 A. Yes.

9 Q. And do you see that there's a
10 difference in the color of the writing between the
11 black and the blue?

12 A. Yes.

13 Q. And do you see in the top e-mail
14 there's a response from Andrew Bush to Theresa
15 Wells saying, "Sorry for the delay in the response,
16 please see responses below"?

17 A. Yes.

18 Q. So based on that, do you understand
19 that she asked questions and then he provided
20 answers?

21 A. Correct.

22 Q. And that the date of this e-mail is
23 what?

24 A. December 1st, 2014.

25 Q. Okay. And can you then go down to the

1 Lawyer - examination/Walden
 2 body of her e-mail that has her question and his
 3 answer, and read both of them into the record for
 4 us, please.
 5 A. Number one?
 6 Q. Correct.
 7 A. "Please provide the backup on the
 8 proposed terms for each of the locations, New
 9 Jersey and Pa., i.e., terms sheets, letters of
 10 intent and/or draft lease agreements." The
 11 response, "I am touring alternate locations in Pa.
 12 on Wednesday and hope to have terms sheets by the
 13 end of the week."
 14 Q. So in your experience, is it unusual
 15 that an application would be looking for locations
 16 after an application was already filed?
 17 A. In this context, yes.
 18 Q. But you don't know --
 19 PROF. CHEN: Theresa Wells, can we
 20 identify who she is?
 21 Q. I'm sorry, who is Theresa Wells?
 22 A. I wasn't sure you actually meant to
 23 say the name.
 24 Q. So why don't --
 25 MR. WALDEN: -- do you mind, chairman,

1 Lawyer - examination/Walden
 2 right?
 3 A. Yes, or a phone call.
 4 Q. Or a phone call. For example, the
 5 company may have had a location that -- in
 6 Philadelphia that was subject to a natural disaster
 7 and suddenly find itself without a place to stay,
 8 right?
 9 A. Yes.
 10 Q. There are a million other explanations
 11 that might answer some of these questions, correct?
 12 A. Correct.
 13 Q. But the point of this exercise is not,
 14 again, what happened with the company, but what the
 15 underwriter did. Would you say the underwriter in
 16 this circumstance should have asked more questions
 17 than the ones you found in the file?
 18 A. The writing what I found in the file,
 19 yes. I don't know if any phone calls were made.
 20 Q. Fair enough. But you know now as you
 21 sit there that we actually have obtained documents
 22 from Cooper Health, right?
 23 A. Yes.
 24 Q. And so I -- again, I just want to
 25 remind you that this building that they are talking

1 Lawyer - examination/Walden
 2 if we just skip over that question?
 3 PROF. CHEN: Okay.
 4 MR. WALDEN: Okay.
 5 Q. So now, did you see any indication in
 6 the file that the underwriter in this case asked
 7 any questions about the fact that the application
 8 was submitted saying, "No jobs were at risk"?
 9 A. No.
 10 Q. Did you see any indication in the file
 11 that the underwriter asked any questions concerning
 12 what the company meant when it said the competitor
 13 state location is TBD, or to be determined?
 14 A. No.
 15 Q. Did you find any indications in the
 16 file that the underwriter asked any questions about
 17 why Andrew Bush at Cooper Health was doing a site
 18 tour after the application had been filed?
 19 A. No.
 20 Q. Okay. All right. So if there was an
 21 explanation for this, what the underwriter could
 22 have done, as we talked about before, is to ask for
 23 some underlying documents and ask the company to
 24 explain these things and if the explanations
 25 weren't enough, to provide documents to back it up,

1 Lawyer - examination/Walden
 2 about in Camden was a building called L-3, right?
 3 A. Yes.
 4 Q. So I'd like you to look first if you
 5 will at tab 19. And I know that these aren't your
 6 documents but again I just kind of want to explore
 7 the point of the kinds of things that an
 8 underwriter could find if they asked, right?
 9 So do you understand that tab 19 is an
 10 e-mail between John Sheridan and Doug Shirley?
 11 A. Yes.
 12 Q. And it's forwarding, Shirley is
 13 forwarding to John Sheridan an e-mail from Dave
 14 Foster?
 15 A. Yes.
 16 Q. And was Dave Foster at the time an
 17 individual that worked at an organization called
 18 Cooper's Ferry?
 19 A. Yes.
 20 Q. And was Doug Shirley at the time the
 21 CFO of Cooper Health?
 22 A. You mean John Shirley --
 23 Q. Unless I had it --
 24 A. Oh, Doug Shirley, I'm sorry, yes.
 25 Q. Doug Shirley was the CFO and John

<p style="text-align: right;">Page 182</p> <p>1 Lawyer - examination/Walden</p> <p>2 Sheridan was the CEO.</p> <p>3 A. Yes.</p> <p>4 Q. And to summarize the earlier chain</p> <p>5 which I know you've read, is this essentially an</p> <p>6 offer from Dave Foster to lease space in the L-3</p> <p>7 building to Cooper Health?</p> <p>8 A. Correct.</p> <p>9 Q. And what's the date of that offer?</p> <p>10 A. March 28th, 2014.</p> <p>11 Q. No, the one below.</p> <p>12 A. The one below. March 27th, 2014.</p> <p>13 Q. And so we're talking roughly seven</p> <p>14 months before the Grow application.</p> <p>15 A. Right.</p> <p>16 Q. Right? And do you see that in the top</p> <p>17 e-mail, Shirley is reacting to the terms of the</p> <p>18 proposal that Foster made?</p> <p>19 A. Correct.</p> <p>20 Q. And could you just, maybe other</p> <p>21 people's eyes are better than mine, I can't read</p> <p>22 that, could you just read the language that Shirley</p> <p>23 used into the record.</p> <p>24 A. Sure. "I have the proposal from</p> <p>25 Liberty, and it is very rich! From a cash flow</p>	<p style="text-align: right;">Page 183</p> <p>1 Lawyer - examination/Walden</p> <p>2 and balance sheet, the L-3 is the best deal by a</p> <p>3 long shot. No other option can touch it so you</p> <p>4 need to be okay with this option before we go out</p> <p>5 with it."</p> <p>6 Q. And again, we don't know what the CEO</p> <p>7 said based on the documents I put in front of you.</p> <p>8 A. Right.</p> <p>9 Q. The CEO may have said, "No way, we're</p> <p>10 not going there," for whatever reason.</p> <p>11 A. Right.</p> <p>12 Q. CFO is focused on money, other</p> <p>13 businesspeople are focusing on other things as</p> <p>14 well.</p> <p>15 A. Correct.</p> <p>16 Q. But is it also fair to say that we</p> <p>17 showed you a document that was dated about, a</p> <p>18 little bit less than a month later where Cooper</p> <p>19 Health was laying out the options that it was</p> <p>20 considering?</p> <p>21 A. Yes.</p> <p>22 Q. Turn to tab 20. Again, for the people</p> <p>23 that have bad eyes like me, what does the top text</p> <p>24 say above the black bar?</p> <p>25 A. "Potential Cooper Office Options."</p>
<p style="text-align: right;">Page 184</p> <p>1 Lawyer - examination/Walden</p> <p>2 Q. And what's the date of the document?</p> <p>3 A. April 1st, 2014.</p> <p>4 Q. And so the other e-mail that we just</p> <p>5 saw just was on March 27th, just a couple of days</p> <p>6 earlier.</p> <p>7 A. Right.</p> <p>8 Q. You've reviewed this document before</p> <p>9 today?</p> <p>10 A. Yes.</p> <p>11 Q. Is it fair to say that each of the</p> <p>12 three options that are listed are options in</p> <p>13 Camden?</p> <p>14 A. Yes.</p> <p>15 Q. None of them are at 1500 Market Street</p> <p>16 in Philadelphia.</p> <p>17 A. No.</p> <p>18 Q. And is it fair to say that this</p> <p>19 document reflects in each instance that, at this</p> <p>20 time, Cooper Health was hoping for tax incentives</p> <p>21 in each of the instances for each of these</p> <p>22 buildings?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, we're done with the binder.</p> <p>25 Focusing on this application, and again, from the</p>	<p style="text-align: right;">Page 185</p> <p>1 Lawyer - examination/Walden</p> <p>2 perspective of an underwriter, based on the</p> <p>3 totality of circumstances, do you think these</p> <p>4 documents impact your assessment of whether or not</p> <p>5 the Philadelphia location was bona fide, suitable</p> <p>6 and available?</p> <p>7 A. It does.</p> <p>8 Q. And as an underwriter, if you do have</p> <p>9 concerns on a scale from one to ten, ten being the</p> <p>10 worst, based on the totality of the circumstances,</p> <p>11 where is your concern as an underwriter as you look</p> <p>12 at this file?</p> <p>13 A. I was looking between a seven and</p> <p>14 eight, probably a seven.</p> <p>15 Q. So again, is it fair to say that if you</p> <p>16 were the underwriter -- again, the company may have</p> <p>17 had plenty of explanations for all this stuff but a</p> <p>18 lot more questions should be asked about this</p> <p>19 particular file.</p> <p>20 A. Yes, I would have asked more</p> <p>21 questions. But I wouldn't have anticipated to</p> <p>22 receive the e-mail that we just discussed.</p> <p>23 Q. Oh, you wouldn't expect that e-mail to</p> <p>24 be volunteered.</p> <p>25 A. Right.</p>

<p style="text-align: right;">Page 186</p> <p>1 Lawyer - examination/Chen</p> <p>2 Q. Well, could I ask you this: If the</p> <p>3 company actually had a document that showed that</p> <p>4 they made the decision before they ever applied for</p> <p>5 Grow to stay in Camden, what would that do to their</p> <p>6 application? I'm not saying that occurred in this</p> <p>7 circumstance, but what significance would that be</p> <p>8 for that application?</p> <p>9 A. That would be a problem.</p> <p>10 Q. Okay.</p> <p>11 MR. WALDEN: Prof. Chen, do you have</p> <p>12 any other questions for Mr. Lawyer?</p> <p>13 PROF. CHEN: Just one.</p> <p>14 EXAMINATION BY</p> <p>15 PROF. CHEN:</p> <p>16 Q. So I understand how the EDA process</p> <p>17 might work, it was noted that, in the original LOIs</p> <p>18 by NFI and The Michaels Organization, the LOIs as</p> <p>19 specified, the same space, part of the same space</p> <p>20 at 1500 Market Street.</p> <p>21 A. Correct.</p> <p>22 Q. Is it possible that those two</p> <p>23 applications were assigned to different</p> <p>24 underwriters?</p> <p>25 A. I don't now about the BDO but I</p>	<p style="text-align: right;">Page 187</p> <p>1 Lawyer - examination/Walden</p> <p>2 believe they were assigned to the same</p> <p>3 underwriter.</p> <p>4 PROF. CHEN: Okay, thanks.</p> <p>5 MR. WALDEN: That's actually a great</p> <p>6 question.</p> <p>7 BY MR. WALDEN:</p> <p>8 Q. Was the same BDO in both cases --</p> <p>9 A. It was the same underwriter.</p> <p>10 MR. WALDEN: Thanks.</p> <p>11 Can we have a short break after this</p> <p>12 witness?</p> <p>13 PROF. CHEN: I think that would be</p> <p>14 fine. Short, in class when I say five</p> <p>15 minute break, people get back in ten.</p> <p>16 MR. WALDEN: Five minutes.</p> <p>17 PROF. CHEN: Five minutes.</p> <p>18 (Recess taken.)</p> <p>19 PROF. CHEN: Next we have testimony of</p> <p>20 Mr. Tim Lizura. Mr. Lizura, welcome.</p> <p>21 (Continued on following page.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 188</p> <p>1 Lizura - examination/Walden</p> <p>2 T I M O T H Y L I Z U R A , having been first</p> <p>3 duly sworn, was examined and testified as</p> <p>4 follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. WALDEN:</p> <p>7 Q. So I think my colleague told you that</p> <p>8 this is being live-streamed and the acoustics on</p> <p>9 the live stream are apparently challenging, and so</p> <p>10 in order to accommodate the people that couldn't</p> <p>11 physically be here, in the last hearing there were</p> <p>12 people all over the state that are listening,</p> <p>13 you've got to keep your mouth a little bit close to</p> <p>14 the microphone.</p> <p>15 So I know that some of the time we may</p> <p>16 be looking at documents. Sometimes you may be</p> <p>17 looking at the screen but if you could try to, and</p> <p>18 I'll remind you if I think of it, to return and</p> <p>19 give your answer to the microphone, that would be</p> <p>20 great. Thank you very much.</p> <p>21 So could you please say and spell your</p> <p>22 name for the record.</p> <p>23 A. Sure. It's Timothy Lizura,</p> <p>24 L-i-z-u-r-a.</p> <p>25 Q. So in preparation for your testimony</p>	<p style="text-align: right;">Page 189</p> <p>1 Lizura - examination/Walden</p> <p>2 today, Mr. Lizura, is it fair to say that we met</p> <p>3 before?</p> <p>4 A. We have.</p> <p>5 Q. We had a nice couple of hours together</p> <p>6 to explore scenarios.</p> <p>7 A. We did.</p> <p>8 Q. You understand that today, I'm going to</p> <p>9 ask you about a subset of those areas.</p> <p>10 A. Yes.</p> <p>11 Q. You know you have a right to an</p> <p>12 attorney here?</p> <p>13 A. I do.</p> <p>14 Q. And your attorney is with you in the</p> <p>15 room.</p> <p>16 A. She is.</p> <p>17 Q. But you're appearing here voluntarily?</p> <p>18 A. Voluntarily.</p> <p>19 Q. We appreciate that, thank you very</p> <p>20 much, and thank you for the quality of information</p> <p>21 that you gave us when we were together.</p> <p>22 A. Happy to do it.</p> <p>23 Q. So first of all, why don't you start us</p> <p>24 off telling us a little bit about your career.</p> <p>25 A. I've a short opening statement.</p>

<p style="text-align: right;">Page 190</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. Actually, she told me that. And go</p> <p>3 ahead, please.</p> <p>4 A. Thanks. Some of it might be covered</p> <p>5 in that but feel free to ask again.</p> <p>6 Q. It will shorten my questions, perhaps.</p> <p>7 A. Prof. Chen, and Task Force, thank you</p> <p>8 for having me here today. My name is Timothy</p> <p>9 Lizura. For 22 years I devoted my work to the New</p> <p>10 Jersey Economic Development Authority because I</p> <p>11 believed in, and I still believe in, its mission</p> <p>12 to create and retain jobs for the people of New</p> <p>13 Jersey and to support positive economic</p> <p>14 development in our state.</p> <p>15 I joined the EDA in 1995 as an analyst</p> <p>16 in the real estate development department, and I</p> <p>17 worked my way up to the position of President and</p> <p>18 Chief Operating Officer.</p> <p>19 The EDA is a non-partisan organization.</p> <p>20 Our work was not to benefit any one governor, any</p> <p>21 one individual or one entity. Our priority and</p> <p>22 purpose always was to best serve and benefit the</p> <p>23 people of the State of New Jersey in accordance</p> <p>24 with the existing laws enacted by the legislature.</p> <p>25 I served at the EDA under every governor from</p>	<p style="text-align: right;">Page 191</p> <p>1 Lizura - examination/Walden</p> <p>2 Christine Todd Whitman to the first few months of</p> <p>3 Governor Murphy's term. Three of these governors</p> <p>4 were Republicans and four were Democrats.</p> <p>5 Since 1974, the EDA's grants and</p> <p>6 financing have benefitted communities throughout</p> <p>7 New Jersey, and the laws that have evolved over</p> <p>8 those 45 years address the changing needs and</p> <p>9 priorities. My twenty-two years at the EDA span</p> <p>10 from 1995 'till 2018, with a brief time away</p> <p>11 post-9/11 when I was leading the World Trade</p> <p>12 Center's redevelopment efforts. During that</p> <p>13 tenure, regardless of who was at the helm of the</p> <p>14 state government, our purpose and mission of the</p> <p>15 EDA would not change.</p> <p>16 The laws that the EDA was tasked to</p> <p>17 administer have included special focus on and</p> <p>18 incentives for the development of some of the</p> <p>19 poorest cities in our state. For example,</p> <p>20 Governor McGreevey signed the Municipal</p> <p>21 Rehabilitation and Recovery Act of 2002 to help</p> <p>22 the City of Camden. Governor Corzine signed the</p> <p>23 Urban Transit Hub Tax Credit law in 2007, and</p> <p>24 Governor Christie signed the Economic Opportunity</p> <p>25 Act of 2013, targeting cities such as Camden,</p>
<p style="text-align: right;">Page 192</p> <p>1 Lizura - examination/Walden</p> <p>2 Passaic. Paterson, Trenton and Atlantic City for</p> <p>3 redevelopment. As recently as October of 2018,</p> <p>4 Governor Murphy expanded the Economic Opportunity</p> <p>5 Act to benefit the City of Paterson and areas</p> <p>6 around the Atlantic City airport.</p> <p>7 Although the EDA was consulted on</p> <p>8 proposed legislation, the laws were approved and</p> <p>9 enacted by the legislature and signed by the</p> <p>10 governor. These laws were highly complex and</p> <p>11 constantly in flux. The EDA was tasked with the</p> <p>12 day-to-day implementation of these laws.</p> <p>13 Here's how the grant approval process</p> <p>14 worked. Applicant businesses were required to</p> <p>15 submit a detailed application. The EDA staff</p> <p>16 verified certain information, and the CEOs of</p> <p>17 those applicants were required to certify to the</p> <p>18 truthfulness of the application, which was a</p> <p>19 formal certification modeled after that required</p> <p>20 by Sarbanes-Oxley for public entities.</p> <p>21 Applications were reviewed and revised to ensure</p> <p>22 compliance with laws and regulations and if</p> <p>23 ultimately they did not comply, the applications</p> <p>24 were not advanced and were not submitted for</p> <p>25 approval by the EDA board. Throughout this entire</p>	<p style="text-align: right;">Page 193</p> <p>1 Lizura - examination/Walden</p> <p>2 process, we were guided by the Attorney General's</p> <p>3 Office to ensure that each individual project</p> <p>4 conformed with the law and policy.</p> <p>5 At the EDA, we worked within the</p> <p>6 parameters of the laws enacted by the legislature</p> <p>7 to get to a "yes," in order to encourage new jobs</p> <p>8 and businesses, investment and growth into areas</p> <p>9 of our state that sometimes faced the greatest</p> <p>10 challenges. Every project was vetted by the EDA</p> <p>11 staff, committee members, and the Attorney</p> <p>12 General's Office before it reached the board's</p> <p>13 level for approval. And to ensure adequate</p> <p>14 oversight, members of the Attorney General's</p> <p>15 Office were specifically designated to the EDA,</p> <p>16 working closely with us to review and approve</p> <p>17 projects and transactions. The Attorney-General's</p> <p>18 Office was included in all board committee</p> <p>19 meetings where we discussed in detail all the</p> <p>20 projects and all the policies and was present at</p> <p>21 every EDA board meeting where projects were</p> <p>22 approved.</p> <p>23 Were we successful? The numbers show</p> <p>24 that, yes, we were. According the to the</p> <p>25 comptroller's report, as of February 2018, the \$11</p>

<p style="text-align: right;">Page 194</p> <p>1 Lizura - examination/Walden</p> <p>2 billion in approved tax credits are based on one</p> <p>3 thousand approved projects that the EDA expects</p> <p>4 will generate more than \$33 billion in new capital</p> <p>5 investment, and result in a total of approximately</p> <p>6 240,000 new and retained jobs. Those tax credits</p> <p>7 are only provided if employers complete the</p> <p>8 projects as approved, and maintain the jobs</p> <p>9 throughout the grant term. There are different</p> <p>10 ways to discuss these numbers but the simple and</p> <p>11 accurate conclusion is the same: The EDA expects</p> <p>12 these projects will generate far more revenue to</p> <p>13 the State of New Jersey than the total costs of</p> <p>14 the program.</p> <p>15 These programs were especially helpful</p> <p>16 for New Jersey's distressed cities. While New</p> <p>17 Jersey is one of the wealthiest states in the</p> <p>18 country, we are also home to a number of</p> <p>19 struggling communities which face an</p> <p>20 infrastructure of urban blight. We are not a</p> <p>21 large state, but our economic disparity is</p> <p>22 enormous. Over time, the legislature has tried to</p> <p>23 address that disparity.</p> <p>24 Camden has long been one of the poorest</p> <p>25 if not the poorest city in the entire nation. To</p>	<p style="text-align: right;">Page 195</p> <p>1 Lizura - examination/Walden</p> <p>2 bring businesses and jobs to Camden and other</p> <p>3 distressed communities, policymakers determined</p> <p>4 that significant incentives were needed to attract</p> <p>5 large scale meaningful investments into these</p> <p>6 regions, these regions that lacked viable</p> <p>7 commercial buildings and infrastructure.</p> <p>8 We ran the EDA in a responsible and</p> <p>9 professional manner to bring together the</p> <p>10 interests of New Jersey and business. I am proud</p> <p>11 of the work that we did. During my tenure, we</p> <p>12 worked hard to bring jobs and investments</p> <p>13 throughout New Jersey within the parameters of an</p> <p>14 ever-changing legal and complicated legal</p> <p>15 landscape. And we were successful in our efforts</p> <p>16 to strengthen our state's economy and to help</p> <p>17 improve the lives of people and communities</p> <p>18 throughout New Jersey.</p> <p>19 I thank you, and I thank you, Professor</p> <p>20 Chen, for the opportunity to come here today and I</p> <p>21 welcome whatever questions you might have.</p> <p>22 Q. Thank you very much, Mr. Lizura, and</p> <p>23 then if you could just speak into the microphone --</p> <p>24 A. Okay.</p> <p>25 Q. -- if one of my colleagues raises their</p>
<p style="text-align: right;">Page 196</p> <p>1 Lizura - examination/Walden</p> <p>2 hands. I just want to ask you about a couple of</p> <p>3 things, and you're right, your opening statement</p> <p>4 did resolve some of my questions. And just as a</p> <p>5 point of amusement, I refer to you as the CEO, so I</p> <p>6 gave you a promotion --</p> <p>7 A. You seem to be the only one who has.</p> <p>8 Q. In any event, let me first ask you,</p> <p>9 again, this was not a question I asked you before,</p> <p>10 but when you were at the EDA, was there a woman</p> <p>11 there named Erin Gold?</p> <p>12 A. Yes.</p> <p>13 Q. And what position was she in?</p> <p>14 A. Prior to my departure, there was the</p> <p>15 director, I believe of governance and</p> <p>16 communications.</p> <p>17 Q. So she served under you.</p> <p>18 A. She reported generally to either the</p> <p>19 CEO directly or to a senior vice-president.</p> <p>20 Q. And while you were there, how many</p> <p>21 different CEOs were there?</p> <p>22 A. In my tenure, we had three CEOs; Caren</p> <p>23 Franzini, Michelle Brown, and Melissa Orsen.</p> <p>24 Q. Are you still in touch with Ms. Gold</p> <p>25 today?</p>	<p style="text-align: right;">Page 197</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Not recently.</p> <p>3 Q. In the last six months or so, have you</p> <p>4 text-messaged with her at all?</p> <p>5 A. Last six months? I don't know that I</p> <p>6 did. Certainly not on a frequent basis, if it was</p> <p>7 a merry Christmas or happy holidays or something,</p> <p>8 it would be social, or -- "crazy times," something</p> <p>9 like that.</p> <p>10 Q. I just need to ask for some of this for</p> <p>11 a different reason. I appreciate the fact that you</p> <p>12 started with kind of an explanation of this. But I</p> <p>13 want to just first kind of help, for listeners and</p> <p>14 people in the audience that may not be policy</p> <p>15 wonks, do you consider yourself a policy wonk?</p> <p>16 A. I consider myself a good government</p> <p>17 guy.</p> <p>18 Q. Okay, for those people that may not be</p> <p>19 so steeped in the drivers of different kinds of</p> <p>20 incentive programs, can you just help us understand</p> <p>21 at a very high level, were tax incentives, what are</p> <p>22 tax incentives intended to do?</p> <p>23 A. It's a great question, and there's a</p> <p>24 couple of things I'd like to just say generally</p> <p>25 about tax incentives, right? So tax incentives</p>

<p style="text-align: right;">Page 198</p> <p>1 Lizura - examination/Walden</p> <p>2 are a tool that municipalities and</p> <p>3 instrumentalities, whether the state, counties,</p> <p>4 local, national, use in order to try to influence</p> <p>5 behavior of corporations.</p> <p>6 What's interesting is, in the field of</p> <p>7 competing for these jobs, right, every state does</p> <p>8 this a little different. States like Texas have</p> <p>9 no corporate business tax at all. So that would</p> <p>10 be -- that's a way to do tax incentives, not</p> <p>11 charge taxes. State of Florida charges no gross</p> <p>12 income tax to its employees, so -- the two people</p> <p>13 who work in that state -- so there's a couple of</p> <p>14 levels of taxes and how it interplays with the</p> <p>15 success or lack of success your community will</p> <p>16 have.</p> <p>17 Then absent -- then on top, or after</p> <p>18 the large kind of ten-thousand-foot level of tax</p> <p>19 policy and tax incentives is, how does it shape a</p> <p>20 decision to make an investment in a particular</p> <p>21 location?</p> <p>22 So if you're a company, all things</p> <p>23 being equal, would you have had an inclination to</p> <p>24 invest in a stable, well-run thriving community or</p> <p>25 would you want to invest in a community with</p>	<p style="text-align: right;">Page 199</p> <p>1 Lizura - examination/Walden</p> <p>2 blight, poorly managed, and lack of</p> <p>3 infrastructure? Your choice would be obvious.</p> <p>4 You'd rather put your investment in the former.</p> <p>5 So the way you get a company to think</p> <p>6 about investing in the latter is, you say, "If you</p> <p>7 do this, we will incent that decision through tax</p> <p>8 incentives." So there's kind of macro tax policy,</p> <p>9 which -- which is embedded in the code, and -- and</p> <p>10 not to go too far astray, but the code has all</p> <p>11 kinds of tax credits in it, new hire tax credits,</p> <p>12 investment tax credits, energy efficiency tax</p> <p>13 credits, all of which people file on their tax</p> <p>14 returns and check the box, and they submit it in</p> <p>15 and they get the benefit of the tax credit.</p> <p>16 And then there's like tax credit law at</p> <p>17 a program level, so there's tax credits in the</p> <p>18 code, there's tax credits that are in a program,</p> <p>19 and there's tax policy, all those things kind of</p> <p>20 vet and shape how a company might choose to locate</p> <p>21 things.</p> <p>22 Q. But the opening line which sounds</p> <p>23 familiar to me, because I've heard it many times,</p> <p>24 but the point is that the tax incentives at a very</p> <p>25 high level, is just to change corporate behavior,</p>
<p style="text-align: right;">Page 200</p> <p>1 Lizura - examination/Walden</p> <p>2 and to change corporate decisions.</p> <p>3 A. Yup.</p> <p>4 Q. It's not in the short term, it's in the</p> <p>5 long term so there's a sustainable economy.</p> <p>6 A. Well, that would be debatable.</p> <p>7 Sometimes, I would say that in the Urban Transit</p> <p>8 Hub tax credit, that program was narrow in scope.</p> <p>9 It had a sunset on it, it had fixed level</p> <p>10 incentives, it was designed to incent catalytic</p> <p>11 investments. You had to spend \$50 million or more</p> <p>12 on a project to qualify, it had to be in one of</p> <p>13 eight target cities, it had to be -- so that</p> <p>14 particular project was -- was a bit of goosing a</p> <p>15 local economy rather than systemic changes over --</p> <p>16 over time.</p> <p>17 So I think regular tax policy is a</p> <p>18 little bit more the, you know -- we'll get into</p> <p>19 it.</p> <p>20 Q. But with the Grow program in</p> <p>21 particular, is it fair to say that the Grow program</p> <p>22 is, given its focus on job retention, job creation,</p> <p>23 kind of a long-term vision --</p> <p>24 A. Absolutely.</p> <p>25 Q. And that's why the incentives are</p>	<p style="text-align: right;">Page 201</p> <p>1 Lizura - examination/Walden</p> <p>2 spread out over a long time?</p> <p>3 A. Yes. And the incentives being spread</p> <p>4 over a long time is both in order to -- in order</p> <p>5 to ensure that people maintain the jobs at the</p> <p>6 location that we approve of, and that is an</p> <p>7 important piece to this, because if you're</p> <p>8 creating those jobs in an urban area, and you're</p> <p>9 getting a higher compensation under the program,</p> <p>10 than a lower one, so you can't -- you can't -- you</p> <p>11 can't get approved in a distressed area and then</p> <p>12 move five years later, even though you're keeping</p> <p>13 the jobs in the state too, and expect that you're</p> <p>14 having the same kind of impact that we are</p> <p>15 expecting.</p> <p>16 So it is a longer term commitment, but</p> <p>17 it also -- it also aligns the risk to the state</p> <p>18 appropriately. In that sense, you're not writing</p> <p>19 a check up front, and some states do this, some</p> <p>20 states will write you a check at approval and then</p> <p>21 try to get it back if you don't do what you're</p> <p>22 supposed to do. A lot of states get burned that</p> <p>23 way with programs.</p> <p>24 Our program, I think, our program, or</p> <p>25 that program, that program, Grow, marries the risk</p>

<p style="text-align: right;">Page 202</p> <p>1 Lizura - examination/Walden</p> <p>2 and reward appropriately because it allows the</p> <p>3 cost of the program to be spread over ten years</p> <p>4 and to it makes sure that we're not paying for</p> <p>5 jobs that haven't materialized yet.</p> <p>6 Q. That was a very long answer.</p> <p>7 A. Sorry.</p> <p>8 Q. We're going to be here for a long time.</p> <p>9 A. Sorry.</p> <p>10 Q. That's fine. But let's give everyone</p> <p>11 an example of the kind of thing that that a tax</p> <p>12 incentive could do immediately, right? If there</p> <p>13 was a specific problem in a specific area, a tax</p> <p>14 incentive could, if designed appropriately, have</p> <p>15 the potentiality to solve that problem, right?</p> <p>16 A. I suppose, depending what the problem</p> <p>17 is, if it works well, if it's designed well.</p> <p>18 Q. Let's unpack that a little bit, right?</p> <p>19 One of the things you mentioned in your opening</p> <p>20 comments, which I certainly appreciate, is that</p> <p>21 Camden is one of the poorest cities, if not the</p> <p>22 poorest city in the nation, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And Camden was a food desert, right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 203</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. And when I say "a food desert," was</p> <p>3 that for many years, one of the problems that</p> <p>4 Camden residents face is that they don't have a</p> <p>5 grocery store that is anywhere close.</p> <p>6 A. That's a problem.</p> <p>7 Q. And is it fair to say, that is a</p> <p>8 particularly acute problem in the poorest</p> <p>9 communities in Camden?</p> <p>10 A. Yes.</p> <p>11 Q. So a well-designed tax incentive</p> <p>12 program could give incentives to companies to swoop</p> <p>13 in and open that grocery store.</p> <p>14 A. It could.</p> <p>15 Q. And we're going to talk about that</p> <p>16 today. But what -- I assume that from a policy</p> <p>17 perspective, now, I'm talking -- we're going to</p> <p>18 talk policy, policy, policy today, right? I'm not</p> <p>19 talking about what the legislature intended, you</p> <p>20 know, I'm going to ask you about the act and the</p> <p>21 bill and changes to the bill.</p> <p>22 But one thing that from a policy</p> <p>23 perspective, tax incentives are not a preparation</p> <p>24 for, they are not supposed to simply be a boon to</p> <p>25 developers, is that fair?</p>
<p style="text-align: right;">Page 204</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Boon, I would say a boon suggests</p> <p>3 over-enrichment.</p> <p>4 Q. Yes.</p> <p>5 A. So I would say yes.</p> <p>6 Q. So the first thing I want to do just to</p> <p>7 set the stage is, I want people to understand the</p> <p>8 way that the Opportunity Act was marketed, because</p> <p>9 I think that a lot of people in the broader space</p> <p>10 don't really understand that there was marketing</p> <p>11 around it, and that was not EDA's, the document I'm</p> <p>12 going to show you is not an EDA document, correct?</p> <p>13 A. Um-hum.</p> <p>14 Q. Is it fair that is a document that was</p> <p>15 created by a developer?</p> <p>16 A. Yes.</p> <p>17 Q. Is it fair that it was created by a</p> <p>18 developer called Brandywine?</p> <p>19 A. Yes.</p> <p>20 Q. So why don't we look at tab 1 of the</p> <p>21 binder.</p> <p>22 Can people actually read that? No, so</p> <p>23 I'm not wrong, it's not just me. So I want you to</p> <p>24 see that, I think it's on slide 6, I think we</p> <p>25 highlighted some language for you, something --</p>	<p style="text-align: right;">Page 205</p> <p>1 Lizura - examination/Walden</p> <p>2 okay. So it does say that 2013 Economic</p> <p>3 Opportunity Act, and just for everyone's context,</p> <p>4 whether it's highlighted or not, that little box</p> <p>5 there, just read -- I'm going back to the</p> <p>6 microphone, sorry -- just read that language into</p> <p>7 the record, please.</p> <p>8 MR. WALDEN: Wait, I'm sorry, can you</p> <p>9 hold for a second until -- I'm sorry, your</p> <p>10 name is?</p> <p>11 A VOICE: Edgar.</p> <p>12 MR. WALDEN: Until Edgar has done his</p> <p>13 work. Thank you, Edgar.</p> <p>14 (A pause in the proceedings.)</p> <p>15 Q. So just from tab 1 of your binder,</p> <p>16 could you just read that whole bubble into the</p> <p>17 record under where it says, "2013 Economic</p> <p>18 Opportunity Act."</p> <p>19 A. "The Economic Opportunity Act of 2013</p> <p>20 provides tax incentives to companies relocating to</p> <p>21 Camden. The amount of incentives are based on the</p> <p>22 greater of the tax credit per new job or a credit</p> <p>23 against the capital investment made by an owner.</p> <p>24 The result is that occupants may be able to obtain</p> <p>25 tax credits, 1, greater than their lease cost, or,</p>

<p style="text-align: right;">Page 206</p> <p>1 Lizura - examination/Walden</p> <p>2 2, equal to or greater than the cost of a newly</p> <p>3 constructed building over ten years."</p> <p>4 Q. So can I ask you a couple of questions</p> <p>5 about that?</p> <p>6 First of all, do you know if that's</p> <p>7 true? Is it actually true that the way the program</p> <p>8 works, a developer could basically get a free</p> <p>9 building or even make money above the construction</p> <p>10 costs?</p> <p>11 A. The tenant could. The credit didn't</p> <p>12 go to the developer. The credit always went to</p> <p>13 the business. So under the right circumstances,</p> <p>14 the tenant could pay less in rent than they</p> <p>15 received in tax credits, correct.</p> <p>16 Q. But I'm sorry, you may not understand</p> <p>17 this, because we all know this is not your</p> <p>18 document. But can you just help me understand what</p> <p>19 this language might mean?</p> <p>20 "The result is that occupants may be</p> <p>21 able to obtain tax credits equal to or greater than</p> <p>22 the cost of a newly constructed building over ten</p> <p>23 years." So I take it that that is a situation</p> <p>24 where it's an occupant-constructed building?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 207</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. Okay. So in the circumstances of an</p> <p>3 occupant-constructed building, is it accurate that</p> <p>4 someone -- that that individual or that company</p> <p>5 could make an amount in tax credits that exceeds</p> <p>6 the cost of the building?</p> <p>7 A. I would think it's unlikely. I would</p> <p>8 say I guess it would depend on how you define the</p> <p>9 cost of the building. Is it just construction</p> <p>10 costs, or full development costs or land costs.</p> <p>11 What I believe they are speaking to</p> <p>12 there is what's called The Camden Alternative,</p> <p>13 which is really a legacy Urban Transit Hub tax</p> <p>14 credit program which used to be marketed as the</p> <p>15 free building program across those eight cities.</p> <p>16 And the tax credit award could be sized</p> <p>17 so the total eligible costs of the construction</p> <p>18 project when you're building is for a single</p> <p>19 tenant, even a multi-tenant building potentially,</p> <p>20 generally speaking, I see a lot --</p> <p>21 Q. I'm sorry, I'm not sure I understand</p> <p>22 the question because you see the header says, "The</p> <p>23 2013 Economic Opportunity Act."</p> <p>24 A. Yes.</p> <p>25 Q. So were you saying that you thought</p>
<p style="text-align: right;">Page 208</p> <p>1 Lizura - examination/Walden</p> <p>2 that this was a reference to another --</p> <p>3 A. No, no. I'm sorry. As the Economic</p> <p>4 Opportunity Act folded five legacy programs into</p> <p>5 its bones, if you will. One of those programs was</p> <p>6 the Urban Transit Hub tax credit program. That</p> <p>7 credit -- that -- the remnants of that program</p> <p>8 were embedded in this law only for the City of</p> <p>9 Camden and we, for shorthand, we called it The</p> <p>10 Camden Alternative because every place else in the</p> <p>11 state there was a fairly straightforward -- when I</p> <p>12 say fairly straightforward in context of a 70-page</p> <p>13 law -- a base award, depending where you were, and</p> <p>14 bonuses, depending on the characteristics of the</p> <p>15 project, and it came out to a per-job award based</p> <p>16 on the characteristics.</p> <p>17 In Camden, an applicant could</p> <p>18 self-select and ask for or apply for a award per</p> <p>19 job that was based on the amount of capital</p> <p>20 investment their project had, rather than the</p> <p>21 calculated base and bonus structure. I think we</p> <p>22 had both in Camden. The greater awards were</p> <p>23 often, and I say almost exclusively, The Camden</p> <p>24 Alternative awards, and you would get very high</p> <p>25 per-job award calculation using that model.</p>	<p style="text-align: right;">Page 209</p> <p>1 Lizura - examination/Walden</p> <p>2 So a company would build an entire</p> <p>3 building and the cost of that building would be</p> <p>4 allocated over ten years and it would be guided by</p> <p>5 the number of employees. The company was still</p> <p>6 obligated to keep those employees there every year</p> <p>7 for ten years.</p> <p>8 So if a calculation came out to be two</p> <p>9 hundred thousand dollars for an employee as an</p> <p>10 award, and there was a hundred jobs at approval,</p> <p>11 they would have to keep a hundred jobs there every</p> <p>12 year to enjoy the full benefit of the full</p> <p>13 capital allocation. If I had 190 jobs in a year,</p> <p>14 the award would be reduced for that year. So it</p> <p>15 was a capital -- it was a capital award program</p> <p>16 that would then reduce to a per-head rate.</p> <p>17 Q. But my question, I think you clarified</p> <p>18 it, is, although you find it unlikely, it is</p> <p>19 possible under the Economic Opportunity Act of</p> <p>20 2013, at least in the City of Camden, that a tax</p> <p>21 incentive award could exceed the cost of a</p> <p>22 building.</p> <p>23 A. I would say that is equal to cost. I</p> <p>24 don't know how they come to exceed the cost of the</p> <p>25 building. It might be how they are defining the</p>

<p style="text-align: right;">Page 210</p> <p>1 Lizura - examination/Walden</p> <p>2 cost of the building. We would have an eligible</p> <p>3 cost and we wouldn't exceed that amount.</p> <p>4 Q. Okay, fair enough.</p> <p>5 PROF. CHEN: Can I have one quick</p> <p>6 question?</p> <p>7 MR. WALDEN: You're the boss.</p> <p>8 PROF. CHEN: Mr. Lizura, am I</p> <p>9 understanding that that part of the program,</p> <p>10 the urban tax credit, literally applied to</p> <p>11 Camden only, or not just Camden, because it</p> <p>12 was part of what I think was known as</p> <p>13 the Garden State Growth Zone?</p> <p>14 THE WITNESS: Camden alone. The</p> <p>15 remnants of that program which found its way</p> <p>16 into the Economic Opportunity Act was solely</p> <p>17 for the City of Camden. It would be a</p> <p>18 Garden State Growth Zone and ERB, which is a</p> <p>19 municipal economic recovery, or...</p> <p>20 BY MR. WALDEN:</p> <p>21 Q. This is no surprise to you, you realize</p> <p>22 that today I'm going to ask you questions about a</p> <p>23 version of the Economic Opportunity Act of 2013</p> <p>24 that was e-mailed to you.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 211</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. And we're going to have a discussion</p> <p>3 about that, but before I do, I just have to ask you</p> <p>4 some questions. Are you familiar with the firm,</p> <p>5 Parker McCay?</p> <p>6 A. I am.</p> <p>7 Q. And did they represent the EDA in any</p> <p>8 capacity as far as you know at any time for any</p> <p>9 purpose?</p> <p>10 A. I -- since '74 is a long time, so I</p> <p>11 would say I don't recall them doing that. You</p> <p>12 know, prior counsel -- I wasn't aware of other</p> <p>13 counsel that we had already retained.</p> <p>14 Q. Can I make a suggestion -- I will get</p> <p>15 really close like this, I know it sounds like Darth</p> <p>16 Vader, but I think it would be just easier even for</p> <p>17 people on the live stream. I'm sure it is.</p> <p>18 But to be clear, the EDA didn't retain</p> <p>19 Parker McCay for the purpose of helping advise it</p> <p>20 in connection with any changes or policy that it</p> <p>21 was implementing or advising on when it came to</p> <p>22 modifications to the draft of the bill.</p> <p>23 A. We did not.</p> <p>24 Q. And when I say the "draft of the bill,"</p> <p>25 just to try to save some time, is it fair that we</p>
<p style="text-align: right;">Page 212</p> <p>1 Lizura - examination/Walden</p> <p>2 both agree that the draft that we're going to be</p> <p>3 looking at is a draft that was sent to you after</p> <p>4 the version had already passed the house and while</p> <p>5 it was under consideration by the Senate?</p> <p>6 PROF. CHEN: You mean the General</p> <p>7 Assembly?</p> <p>8 MR. WALDEN: I'm sorry, the General</p> <p>9 Assembly. Leave it to the Federal</p> <p>10 Government. Sorry about that.</p> <p>11 Q. So Mr. Lizura, again, to be super,</p> <p>12 super clear, because there's lots of different</p> <p>13 reasons that this is super-important, we are not</p> <p>14 going to talk about any people that are in the</p> <p>15 legislature, we're not going to talk about their</p> <p>16 staff, we're not asking questions about any of</p> <p>17 that. All we're doing is focusing on the bill and</p> <p>18 the language and then some changes that were made</p> <p>19 by an individual named Kevin Sheehan. Do you know</p> <p>20 who Kevin Sheehan is?</p> <p>21 A. I do.</p> <p>22 Q. And who is he?</p> <p>23 A. He's a lawyer for the firm of Parker</p> <p>24 McCay.</p> <p>25 Q. And as you sit there today, and I know</p>	<p style="text-align: right;">Page 213</p> <p>1 Lizura - examination/Walden</p> <p>2 I asked you this question at the interview, fair to</p> <p>3 say you didn't remember that he was editing the</p> <p>4 bill?</p> <p>5 A. I did not remember.</p> <p>6 Q. Okay. And you've now seen a document</p> <p>7 that, where we showed you the metadata?</p> <p>8 A. That's right.</p> <p>9 Q. And now I'll ask you a question,</p> <p>10 because I haven't spoken to you since then, did the</p> <p>11 metadata refresh your recollection that Sheehan was</p> <p>12 making edits to the bill?</p> <p>13 A. The metadata reflected them making</p> <p>14 changes to the bill.</p> <p>15 Q. My question was different. It was a</p> <p>16 lawyer's question. Sorry. When you saw it, did</p> <p>17 you say, "Oh, yeah, I remember now"?</p> <p>18 A. I don't recall whether or not I knew</p> <p>19 at the time he was making changes to the bill.</p> <p>20 Q. Okay, fair enough. Okay, so we're</p> <p>21 going to go through some changes, and we're going</p> <p>22 to try to keep this as high level as possible, and</p> <p>23 just in the interests of time, if you could try to</p> <p>24 really focus on the specific questions I'm asking</p> <p>25 because all it is --</p>

<p style="text-align: right;">Page 214</p> <p>1 Lizura - examination/Walden</p> <p>2 MR. WALDEN: -- we're going to take a</p> <p>3 pause for a second.</p> <p>4 PROF. CHEN: You're going to run out</p> <p>5 of batteries.</p> <p>6 Let me take this opportunity to thank</p> <p>7 all the -- all my colleagues at Rutgers Law</p> <p>8 School for helping arranging this hearing</p> <p>9 today, or my colleagues that have been for</p> <p>10 many years handling it. I'm just very, very</p> <p>11 grateful, and very pleased.</p> <p>12 Q. Okay, so, again, I just want to clarify</p> <p>13 the record, when you say that you don't have a</p> <p>14 recollection of Sheehan editing the bill, I just</p> <p>15 want to ask you just a couple of follow-up</p> <p>16 questions.</p> <p>17 Do you have any recollection, for</p> <p>18 example, of attending telephone conferences on</p> <p>19 which Mr. Sheehan was a participant?</p> <p>20 A. I don't -- in regard to that, I'm</p> <p>21 sorry?</p> <p>22 Q. It's a very fair qualification. I</p> <p>23 meant in the context of any work you did on</p> <p>24 EOH2013, do you have any recollections of phone</p> <p>25 calls that involved Mr. Sheehan talking about</p>	<p style="text-align: right;">Page 215</p> <p>1 Lizura - examination/Walden</p> <p>2 changes to the bill?</p> <p>3 A. I don't recall.</p> <p>4 Q. As you sit here today, do you have any</p> <p>5 recollection of having phone calls or meetings</p> <p>6 about the content of EOA 2013 with anyone that you</p> <p>7 knew to be a lawyer at Parker McCay?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. No telephone calls or meetings?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay, no problem. Okay. So I first</p> <p>12 want to ask you to look at tab 2 of the binder. Do</p> <p>13 you see that that is a cover e-mail to you and</p> <p>14 someone else at EDA from another individual?</p> <p>15 A. I do.</p> <p>16 Q. Who is the other individual?</p> <p>17 A. Colin Newman.</p> <p>18 Q. Can you tell us who Colin Newman is?</p> <p>19 A. Was.</p> <p>20 Q. Was.</p> <p>21 A. He was senior counsel in the</p> <p>22 governor'S counsel's office.</p> <p>23 Q. And when you -- just to be clear to set</p> <p>24 the stage, is this the only draft of EOH2013 that</p> <p>25 you received or did you receive several drafts</p>
<p style="text-align: right;">Page 216</p> <p>1 Lizura - examination/Walden</p> <p>2 throughout the process?</p> <p>3 A. I don't recall that. I don't recall.</p> <p>4 I don't recall -- I don't know that I didn't. I</p> <p>5 wouldn't be surprised if we did work with Colin</p> <p>6 along the road, but I don't know that.</p> <p>7 Q. What was Colin's role in this process,</p> <p>8 as you understood it?</p> <p>9 A. So Colin was charged with negotiating</p> <p>10 with the legislature to arrive at a piece of</p> <p>11 legislation that, as I understand it, would be</p> <p>12 passable in both chambers and that was</p> <p>13 satisfactory to the governor, so he was</p> <p>14 effectively negotiating the release for the</p> <p>15 governor's office.</p> <p>16 Q. Now, you know based on our prior</p> <p>17 conversation that I'm going to ask you about a</p> <p>18 number of changes that were made to this.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And just so you understand,</p> <p>21 behind you on the screen what we have is a version</p> <p>22 of what you're looking at, an electronic version.</p> <p>23 And on some of these, depending on where the change</p> <p>24 exists, you can't see the metadata showing who made</p> <p>25 the change unless you put your mouse over,</p>	<p style="text-align: right;">Page 217</p> <p>1 Lizura - examination/Walden</p> <p>2 literally put the mouse over it, and so we've got a</p> <p>3 screen shot of who made the change. So you may not</p> <p>4 remember who made certain changes. If you say "I</p> <p>5 don't remember," I'm just going to say, "Let the</p> <p>6 record reflect as displayed on the screen," it is</p> <p>7 whoever made the change; okay?</p> <p>8 A. Um-hum.</p> <p>9 Q. I'm going to try to keep this high</p> <p>10 level, try not to get too granular on the policy</p> <p>11 aspects, but I think that some of these changes are</p> <p>12 important for people to understand.</p> <p>13 So you see in the binder, we've now</p> <p>14 flagged a bunch of changes in order.</p> <p>15 A. I do.</p> <p>16 Q. There's like number 1, number 2, number</p> <p>17 3 are right there. So I'm going to go through</p> <p>18 those in order, so could you first look at what's</p> <p>19 marked as number 1.</p> <p>20 A. Yes.</p> <p>21 Q. So first of all, people probably can't</p> <p>22 see on the screen if they are like me, so why don't</p> <p>23 we first give some background and context to what</p> <p>24 is being added here.</p> <p>25 A. Sure.</p>

<p style="text-align: right;">Page 218</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. So I'm just going to read the provision</p> <p>3 in the record so you don't have to. "In addition</p> <p>4 to the foregoing, in a Garden State Growth Zone,</p> <p>5 all of the following may qualify as capital</p> <p>6 investment any and all redevelopment and relocation</p> <p>7 costs including, but not limited to, engineering,</p> <p>8 legal, accounting or professional services."</p> <p>9 That's the change to this investigation, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then it goes on to say, "And other</p> <p>12 professional services required," and then it goes</p> <p>13 on to say, "Relocation, environmental remediation</p> <p>14 and infrastructure improvements for the project</p> <p>15 area, including but not limited to, on and</p> <p>16 off-site, utility, road, pier, whatever, bulkhead</p> <p>17 or sidewalk construction or repair."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And the second part that's changed in</p> <p>21 this provision is the addition the words "pier work</p> <p>22 and bulkhead." Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. So first of all, as high level as you</p> <p>25 can, can you just help people understand why this</p>	<p style="text-align: right;">Page 219</p> <p>1 Lizura - examination/Walden</p> <p>2 provision matters in the context of the bill.</p> <p>3 A. Sure. Actually, the bill that you --</p> <p>4 what's going on in this provision is an exchange</p> <p>5 of eligible capital and when a company or</p> <p>6 applicant is utilizing the cap -- the Camden</p> <p>7 alternatives for calculating the award, an</p> <p>8 expansion of the capital investments would allow</p> <p>9 them to claim a higher basis of eligible costs.</p> <p>10 Q. Okay. So thank you for the brevity,</p> <p>11 but let's just make sure that we understand that</p> <p>12 people understand "a higher basis of capital cost."</p> <p>13 That means more money.</p> <p>14 A. It does. Okay. So, well, prior to</p> <p>15 this, a capital -- qualified capital investment</p> <p>16 would be project costs that were directly</p> <p>17 attributable to the project that we approved,</p> <p>18 bricks, sticks, design, cost, that -- that other</p> <p>19 things of that nature. We would allow companies</p> <p>20 to put up to 20 percent of their hard costs.</p> <p>21 Hard costs are a defined or industry</p> <p>22 term that was just directed to construction costs.</p> <p>23 20 percent costs we would allow as soft costs,</p> <p>24 soft costs being things like architects,</p> <p>25 engineers, things that are not directly hard</p>
<p style="text-align: right;">Page 220</p> <p>1 Lizura - examination/Walden</p> <p>2 costs, as an eligible capital investment,</p> <p>3 investment for the purposes of our previous</p> <p>4 definition.</p> <p>5 So this particular provision gives some</p> <p>6 specificity to what costs are actually eligible so</p> <p>7 we don't catch what's in the soft costs. And</p> <p>8 would allow us to include those in direct</p> <p>9 eligible --</p> <p>10 Q. But again, any -- it means more money</p> <p>11 for the applicant if they qualify.</p> <p>12 A. That's correct.</p> <p>13 Q. And they do what they're supposed to do</p> <p>14 in further requirements.</p> <p>15 A. Correct.</p> <p>16 Q. So I just want to ask you, I see that</p> <p>17 the provision for lawyers' fees, but this second --</p> <p>18 this one provision that's added says, "Professional</p> <p>19 services." Professional services, what kinds of</p> <p>20 things would be captured by professional services?</p> <p>21 A. Great question. Off the top of my</p> <p>22 head, they have legal and accounting and</p> <p>23 engineering, we've already defined, right?</p> <p>24 Q. Yes.</p> <p>25 A. So it would be other consulting</p>	<p style="text-align: right;">Page 221</p> <p>1 Lizura - examination/Walden</p> <p>2 services that are not otherwise in the -- kind of</p> <p>3 a catch-all.</p> <p>4 Q. Based on your experience, what are the</p> <p>5 kind of things you can think of?</p> <p>6 A. A traffic study. A traffic study,</p> <p>7 potentially. So, you're right, it's very --</p> <p>8 Q. Would it include, for example,</p> <p>9 insurance?</p> <p>10 A. It could include insurance for the</p> <p>11 construction, not ongoing insurance costs. So a</p> <p>12 project will have to have, from start to finish,</p> <p>13 when it gets completed, the costs stop accounting</p> <p>14 and a CPA will certify to us, to the EDA, what</p> <p>15 costs were eligible. The CPA would line up</p> <p>16 project costs, would line up definition, and then</p> <p>17 the cost for insurance could be a professional</p> <p>18 service in that category.</p> <p>19 Q. If it for example related to the</p> <p>20 construction of a building.</p> <p>21 A. Yes.</p> <p>22 Q. All right. Fair enough. So do you</p> <p>23 remember who added this provision?</p> <p>24 A. I don't -- until recently, you're</p> <p>25 showing me -- is this a --</p>

<p style="text-align: right;">Page 222</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. Okay --</p> <p>3 A VOICE: May I just speak with you</p> <p>4 very briefly?</p> <p>5 MR. WALDEN: Speak to me?</p> <p>6 A VOICE: For just a moment. Sorry.</p> <p>7 I should have, Professor Chen --</p> <p>8 PROF. CHEN: It's all right.</p> <p>9 (A pause in the proceedings.)</p> <p>10 MR. WALDEN: Can I clarify that at a</p> <p>11 break or do you want it clarified now?</p> <p>12 (A pause in the proceedings.)</p> <p>13 BY MR. WALDEN:</p> <p>14 Q. This is just to clarify, based on your</p> <p>15 lawyer's assertion, I don't know the answer to it</p> <p>16 but apparently what's up on the screen, the line</p> <p>17 numbers are different in the book.</p> <p>18 A. Okay.</p> <p>19 Q. Regardless of the line numbers are the</p> <p>20 changes the same?</p> <p>21 A. They are not highlighted. And they</p> <p>22 are not bold.</p> <p>23 Q. I'm sorry, I can't see that Bates</p> <p>24 number, I'm sorry -- yes, I can. Is it Bates</p> <p>25 number 354?</p>	<p style="text-align: right;">Page 223</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Yes, 354.</p> <p>3 Q. I mean -- what I'm seeing, it is</p> <p>4 highlighted but the font is different, consistent</p> <p>5 with what's on the screen.</p> <p>6 A. So the "pier law works and bulkhead"</p> <p>7 is clearly a different color. The "professional</p> <p>8 services" looks just like the -- to me at least,</p> <p>9 maybe I'm colorblind but it looks the same.</p> <p>10 Q. I think that's just a printing error.</p> <p>11 I mean, I'll represent to you that I looked at the</p> <p>12 document in its electronic format and they were the</p> <p>13 same.</p> <p>14 But do you have a recollection that</p> <p>15 these changes were made?</p> <p>16 A. What do you mean, made? Were put into</p> <p>17 a document like this?</p> <p>18 Q. That during the drafting process,</p> <p>19 someone, you can't remember who, but someone added</p> <p>20 professional services to soft costs, and someone</p> <p>21 added pier work and bulkhead to the hard costs?</p> <p>22 A. With the documents you showed me</p> <p>23 earlier?</p> <p>24 Q. Yes.</p> <p>25 A. Sure. I wouldn't have known that</p>
<p style="text-align: right;">Page 224</p> <p>1 Lizura - examination/Walden</p> <p>2 without seeing the documents.</p> <p>3 Q. Understood. All right. So can we just</p> <p>4 now just talk about the policy implications a</p> <p>5 little bit. And I know this may require a little</p> <p>6 bit more explanation. But what I'm really</p> <p>7 interested in is, did you agree with the policy</p> <p>8 implications of these changes?</p> <p>9 A. So when you say me, you mean EDA or me</p> <p>10 personally? So what we would have done is, we</p> <p>11 would have taken this document and when we got it,</p> <p>12 we, as our senior leadership team, members of the</p> <p>13 senior staff and maybe -- we looked at all the</p> <p>14 things and we would come to some sort of agency</p> <p>15 opinion, which was communicated back to Colin.</p> <p>16 What our communication was on this particular</p> <p>17 item, we said it was fine, whether we had a</p> <p>18 problem with it, or if it made it into the bill,</p> <p>19 so clearly, Colin kept it in and it became law.</p> <p>20 Q. Again, I'm not asking you whether it's</p> <p>21 good law, bad law. I'm talking about the policy's</p> <p>22 implications and knowing human memory as I do, I am</p> <p>23 really asking you to, based on your professional</p> <p>24 experience and your incredible legacy with tax</p> <p>25 incentive programs, whether you remember thinking</p>	<p style="text-align: right;">Page 225</p> <p>1 Lizura - examination/Walden</p> <p>2 anything about the policy behind these, so I'll</p> <p>3 break them down.</p> <p>4 When you, at the point in time that you</p> <p>5 saw that someone added professional services into</p> <p>6 the draft, did you agree or disagree with the</p> <p>7 policy if you remember?</p> <p>8 A. I don't recollect. I don't.</p> <p>9 Q. When someone added pier work and</p> <p>10 bulkhead to hard costs, do you remember whether or</p> <p>11 not you agreed or disagreed with the policy</p> <p>12 implications that have provision?</p> <p>13 A. I don't remember.</p> <p>14 Q. Okay. Do you know whether or not</p> <p>15 either of those provisions were added to benefit a</p> <p>16 specific client of Parker McCay?</p> <p>17 A. I do not.</p> <p>18 Q. I'm not saying that they were. But</p> <p>19 we're obviously, I don't know yet, but if that was</p> <p>20 happening here, does that cause you any concern</p> <p>21 from a policy perspective in terms of, you're a</p> <p>22 good government guy?</p> <p>23 A. If is -- I don't have a particular</p> <p>24 opinion on "if."</p> <p>25 Q. Okay. I'll come back to that later,</p>

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 with one that you remember. So let's, why don't we go to a different provision and you see that the second one that I'm going to ask you about is earlier in the paragraph. So again, I'm going to read the change into the record, I'm going to do the exact same thing that I did before, which is help you -- have you help our audience understand why the provision is relevant or important, if you think that it is, and then, talk to you about your perspectives on the policy behind it. Okay.

So this changes the definition of a capital investment to include site acquisition if purchased within 24 months prior to the project application.

Do you see that?

A. I do.

Q. Did I read the language accurately?

A. You missed the last "site." Site preparation was added back, I guess.

Q. Okay, thank you for that clarification. So let me just read it from the document itself. "A site acquisition, if purchased within 24 months prior to the project application, site," and then "preparation and construction" was already there.

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 So the -- from the "site acquisition if purchased within 24 months prior to project application," and then in addition to the word "site," to "preparation." Right?

A. Yes.

Q. First of all, help us understand why this change in capital investments is relevant.

A. My recollection prior to this change, acquisition costs were not eligible, and this broadened the -- increased the cap -- the defined term of capital investment. So again, similar to the provision, it would allow the applicant to ask for a greater amount of award.

Q. My colleague said you have to keep your voice up. Sorry. So I want to just unpack this a little bit, because, again, is it fair to say that this provision, the real impact of it is that there was this thing that didn't used to be added to capital investments that now could be under certain conditions?

A. Yes.

Q. And that would have the potential of increasing the size of the award for the applicant in this circumstance?

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 A. Yes.
 Q. And the circumstance here is site acquisition, which, do you understand that to mean buying or obtaining a property or a building or a qualified facility for your project?

A. Yes.

Q. So would you agree that that's a fairly significant increase in an award?

A. Could be.

Q. Okay, now, there's a limitation on here. And I want to talk to you a little bit about the policy implications of this limitation in two different ways.

First of all, it says, "Site acquisition if purchased within 24 months prior to project application." But isn't -- you said this before -- isn't the whole purpose of the tax incentive program to change behavior?

A. Yes.

Q. And if this allows someone to significantly increase an award when they are already in Camden or wherever they are, they have already gotten a site, they have acquired it prior to their application, does that make sense from a

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 policy perspective?

A. So you're asking about material factors, does it affect material factor, is that what you're basically asking? But I think there's two things. One, if you are aware of the program and you have good advice, somebody might advise you that you acquire the site and still count it as a cost when you file your application 24 months later. It's not 24 months from -- so somebody might see the law, acquire a site, and think that they can still count that acquisition -- well, can they count an acquisition in an application, they --

Q. Let me ask you a crisper question, because everyone has just kind of heard from another person at EDA that really kind of explains the issue with respect to the significance of the decision, right?

Is it fair to say that, under any program for any -- for any city, doesn't matter if it's Jersey City, Marlton, or Camden, that if somebody's already decided to locate their project in a place, that decision is a disqualifying decision, correct?

<p style="text-align: right;">Page 230</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Yes. Yes.</p> <p>3 Q. Okay. Because under either</p> <p>4 certification, whether it's material factor or by</p> <p>5 four, they have to have been choosing between</p> <p>6 alternatives at the time.</p> <p>7 A. I agree. I agree. So -- and -- and</p> <p>8 as I said to you last week, this was always a</p> <p>9 challenge to administer, too, because it doesn't</p> <p>10 seem likely that you would be able to find</p> <p>11 somebody having a material factor, four-by-four,</p> <p>12 however you want to say it, after they had</p> <p>13 acquired this site.</p> <p>14 Q. And again, I don't want to misquote you</p> <p>15 but my recollection of what you said about this</p> <p>16 provision is, you never really understood the</p> <p>17 policy behind it.</p> <p>18 A. That's right. I don't think we ever</p> <p>19 approved anybody under it.</p> <p>20 Q. Are you sure about that?</p> <p>21 A. Oh, I am.</p> <p>22 Q. Maybe we can revisit that another day.</p> <p>23 A. Sure.</p> <p>24 Q. But let -- I want to kind of unpack the</p> <p>25 other side of this, okay? So there's a policy that</p>	<p style="text-align: right;">Page 231</p> <p>1 Lizura - examination/Walden</p> <p>2 says, "Okay, we're going to allow you to -- we know</p> <p>3 that you've acquired this property two years before</p> <p>4 this application, so at some level, you initiated</p> <p>5 an actual business decision to locate here." Let's</p> <p>6 not figure out how that impacts their</p> <p>7 qualification.</p> <p>8 What I'm trying to figure out is, if I</p> <p>9 acquired the site, let's say I was a long-term</p> <p>10 Camden property owner, I've owned property for</p> <p>11 twenty years and I look at this Economic</p> <p>12 Opportunity Act of 2013 and I say to myself, "Wow,</p> <p>13 I want to double down in Camden. I want to tear</p> <p>14 down my warehouse that I've had for twenty years</p> <p>15 and I now want to build a beautiful structure that</p> <p>16 is a multiuse facility, etc."</p> <p>17 Can I count my site acquisition costs</p> <p>18 in my Grow application?</p> <p>19 A. No.</p> <p>20 Q. But from, again, I -- we all understand</p> <p>21 these were not your changes. I'm not asking you to</p> <p>22 defend them or to disagree with them. I'm just</p> <p>23 trying to figure out, kind of understand, unpack</p> <p>24 the policy. From a policy perspective, is there a</p> <p>25 reason that you can think of to essentially</p>
<p style="text-align: right;">Page 232</p> <p>1 Lizura - examination/Walden</p> <p>2 discriminate between newer owners of property and</p> <p>3 older owners of property, if in either case there's</p> <p>4 a question about material factor? Do you</p> <p>5 understand my question?</p> <p>6 A. Um -- the second part gives me --</p> <p>7 Q. I think everybody understands that</p> <p>8 for -- for any business that wanted to avail</p> <p>9 themselves of this tax policy, these tax incentive</p> <p>10 programs, they have to be evaluating a business</p> <p>11 decision. But if they already made the business</p> <p>12 decision, then they couldn't qualify for the tax</p> <p>13 credits.</p> <p>14 A. Correct.</p> <p>15 Q. So if someone already decided, "I'm</p> <p>16 going to be in Camden," then they couldn't -- they</p> <p>17 couldn't qualify, right? Same thing for Jersey</p> <p>18 City.</p> <p>19 A. Correct.</p> <p>20 Q. Same thing for Atlantic City. Okay.</p> <p>21 So in this circumstance, this provision adds -- for</p> <p>22 me, it's unclear how it intersects with that</p> <p>23 because before the application, this envisions that</p> <p>24 two years prior, if they acquired the site two</p> <p>25 years ago, they literally closed the transaction 24</p>	<p style="text-align: right;">Page 233</p> <p>1 Lizura - examination/Walden</p> <p>2 months ago, that they could include those costs</p> <p>3 despite the fact that they obviously already made a</p> <p>4 decision, right?</p> <p>5 A. Right.</p> <p>6 Q. So that's what I'm trying to ask about.</p> <p>7 Let's take two hypothetical applicants. One person</p> <p>8 closed their transaction on the building two years</p> <p>9 ago, one closed five years ago.</p> <p>10 What is the policy reason to</p> <p>11 discriminate between those two owners in terms of</p> <p>12 their site acquisition costs being allowed to</p> <p>13 increase their award?</p> <p>14 A. I don't know of one.</p> <p>15 Q. Okay. And I didn't know where I put my</p> <p>16 glasses but now I do, so let's move on. Let me ask</p> <p>17 you this:</p> <p>18 Do you have any reason to believe as</p> <p>19 you sit here today that this was added to benefit a</p> <p>20 specific company?</p> <p>21 A. I don't.</p> <p>22 Q. And as you said before, you can't say</p> <p>23 for sure whether it did or it didn't.</p> <p>24 A. Correct.</p> <p>25 Q. All right. So why don't we now go to</p>

<p style="text-align: right;">Page 234</p> <p>1 Lizura - examination/Walden</p> <p>2 the third change, which I believe is on page 357.</p> <p>3 And I'm going to just describe it to save time.</p> <p>4 The definition of "a full-time employee" is</p> <p>5 modified to provide that in Camden and Atlantic</p> <p>6 City, "Any project that will include a retail</p> <p>7 facility of at least 150,000 square feet of which</p> <p>8 at least fifty percent is occupied by either a</p> <p>9 full-service supermarket or grocery store, those</p> <p>10 jobs count towards the net benefit," correct?</p> <p>11 A. I think they can be eligible.</p> <p>12 Q. They can qualify as a full-time</p> <p>13 employee. So let's try to set the stage in a</p> <p>14 simple way. Is it generally true that in most</p> <p>15 prior versions of this, retail employees are not</p> <p>16 within the kinds of jobs that will count for</p> <p>17 purposes of the tax incentive award?</p> <p>18 A. Yeah, I was just looking for the</p> <p>19 general restriction on point of sale -- point of</p> <p>20 sale retail jobs not being eligible.</p> <p>21 Q. So just help us from a policy</p> <p>22 perspective. Why, in your experience, why</p> <p>23 generally do tax incentive provisions dissuade or</p> <p>24 prohibit counting of retail jobs as full-time jobs</p> <p>25 within the meaning of the statute?</p>	<p style="text-align: right;">Page 235</p> <p>1 Lizura - examination/Walden</p> <p>2 A. So, the way they described that in the</p> <p>3 past is that generally speaking retailers don't</p> <p>4 make decisions the same way corporate</p> <p>5 headquartered businesses do. They make decision</p> <p>6 on the viability of the retail opportunity,</p> <p>7 meaning is there a market to sell into at that</p> <p>8 location. And tax policy and tax incentives don't</p> <p>9 shape that decision in a material way, in a way</p> <p>10 that these laws support.</p> <p>11 Did I answer your question?</p> <p>12 Q. You did answer my question. Thank you</p> <p>13 very much. So in other words, because retail</p> <p>14 locations are more driven by market forces than tax</p> <p>15 incentives, that's why they are excluded.</p> <p>16 A. Correct.</p> <p>17 Q. And is it fair to understand this as an</p> <p>18 exception to the rule for a certain kind of</p> <p>19 project?</p> <p>20 A. I view it as an exception and</p> <p>21 expansion of the program.</p> <p>22 Q. An expansion of the program.</p> <p>23 A. Correct.</p> <p>24 Q. But with all expansions of the program</p> <p>25 there are choices to be made, right?</p>
<p style="text-align: right;">Page 236</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Um-hum.</p> <p>3 Q. Now, one choice that could have been</p> <p>4 made that's not reflected in this change, and by</p> <p>5 the way, do you recall who it was that made this</p> <p>6 change?</p> <p>7 A. I don't.</p> <p>8 Q. All right.</p> <p>9 MR. WALDEN: Just note for the record</p> <p>10 that again it was Kevin Sheehan at Parker</p> <p>11 McCay.</p> <p>12 Q. One version of the change could be for</p> <p>13 Camden, any grocery store counts, even one that's</p> <p>14 smaller than 75,000 square feet, right?</p> <p>15 A. True.</p> <p>16 Q. Based on the needs of the low-income</p> <p>17 population in Camden, would it have been sensible</p> <p>18 tax policy to include a provision that allowed a</p> <p>19 stand-alone grocery store of five thousand square</p> <p>20 feet or 20,000 square feet or 60,000 square feet to</p> <p>21 enjoy benefits from the tax incentives?</p> <p>22 A. You can make an argument for that.</p> <p>23 Q. Okay. So let me just make sure I</p> <p>24 unpack this. First of all, again, just in terms of</p> <p>25 what you remember, do you remember that this change</p>	<p style="text-align: right;">Page 237</p> <p>1 Lizura - examination/Walden</p> <p>2 was made to the bill as you were viewing it?</p> <p>3 A. I do.</p> <p>4 Q. Did you agree with it or disagree with</p> <p>5 it?</p> <p>6 A. We thought it was an okay policy.</p> <p>7 Q. Okay. But it's really specific, right?</p> <p>8 You have to have, it's not just supermarkets,</p> <p>9 right? Make sure I read this correctly. "A retail</p> <p>10 facility of at least 150,000 square feet of which</p> <p>11 fifty percent is a full service supermarket or</p> <p>12 grocery."</p> <p>13 So what -- why is there -- in an</p> <p>14 area -- because this applied to Camden, right?</p> <p>15 A. And Atlantic City.</p> <p>16 Q. And Atlantic City. Why is there a</p> <p>17 possible incentive to limit in a place where it</p> <p>18 needs food, so limit it to a retail facility where</p> <p>19 only fifty percent of it is grocery store as</p> <p>20 opposed to something else? What's the policy</p> <p>21 reason for that?</p> <p>22 A. I don't know -- I don't know</p> <p>23 necessarily what their policy was, but when we</p> <p>24 looked at it now, a full service grocery store is</p> <p>25 in that range of a other anywhere from 60 to a</p>

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 thousand square feet is -- a full service grocery store. I think one of the full service grocery stores -- so it didn't offend us that that was the provision that was there, so -- and we weren't necessarily negotiating this provision, right, we were -- we weren't negotiating the provision. So my recollection is, we didn't take that exception to it.

Q. Do you remember, Mr. Lizura, whether there was a discussion in the EDA when this provision was added, where anyone took the view that maybe we should just be allowing a grocery store for Camden and Atlantic City regardless of whether it was fifty percent of a larger retail project?

A. I don't recall.

Q. You don't recall. Okay. And I'm sorry if I asked you this before. Did you know whether or not this provision was intended to benefit a specific project that you were aware of?

A. No. Not that I recall.

Q. And for this one, do you recall that there had been a proposal by another company in an earlier program that had sunset, that was still in

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 the works at the time of this change, where they were proposing a 75,000 foot stand-alone Shoprite? Were you aware of that at the time?

A. I don't recall being aware of that.

But this is the Randy Cherkas project you were mentioning to me?

Q. I wasn't going to mention his name, but that's fine. At the time that this provision came in, did you know that Cherkas was still working on a proposal for a stand-alone grocery store in Camden?

A. I don't recall.

Q. But if that grocery store was not part of a retail facility of 150,000 square feet, this provision would have effectively killed that deal?

A. Well, this provision wouldn't apply to that deal. This provision wouldn't support that. Wouldn't --

Q. So again, from a tax incentive perspective, right, that sort of project, right, a 75,000 foot stand-alone grocery store, which is all you're getting from this, plus the retail, but that sort of project would not be allowed to count its jobs as full-time employees within the meaning of

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 the act.

A. Correct.

Q. So if tax incentives were a material part of the incentive to go with that project, the 75,000 foot stand-alone grocery store, this provision would kill that project.

A. We would not be able to advance that project further.

Q. Okay. Why don't we go to number 4. And again, this adds language to the section -- hold on one second, Mr. Lizura.

Okay, this is also a modification of "full-time employee," I think, unless I'm wrong here.

A. No, it's I think it's a megaproject definition.

Q. Okay. So this is -- I apologize, so this is -- I'm going to ask you this in a second but what we're about to read modifies the definition of something that's called a megaproject. And is it fair to say that the Economic Opportunity Act of 2013 provided additional incentives to what was a megaproject?

A. It provided a different set, an

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 increased set of incentives to projects that were not otherwise in a Growth Zone or another community that made it like --

Q. Can you repeat your answer?

A. That would make it like a Garden State Growth Zone.

Q. Okay. So the language that's added here is, "Or a qualified business facility located in a priority area housing the United States headquarters and related facilities of an automobile manufacturer."

A. Yes.

Q. Do you remember that this change was made?

A. Yes.

Q. Do you recall who made it?

A. I do not.

MR. WALDEN: For the record according to the metadata it was Kevin Sheehan at Parker McCay.

Q. What was your understanding of this change? Why was it added?

A. It would provide business that meets the standard of a headquarters, resident quarters

<p style="text-align: right;">Page 242</p> <p>1 Lizura - examination/Walden</p> <p>2 of a big impact to get a treatment like a growth</p> <p>3 zone if it was going to apply for priority. So</p> <p>4 priority zones had caps, benefits, and a</p> <p>5 megaproject increased those. So qualified people</p> <p>6 could get a bigger award if it was still a</p> <p>7 priority award and a --</p> <p>8 Q. At the time that you saw this</p> <p>9 provision, were you aware of the fact that there</p> <p>10 was a specific company that some folks were trying</p> <p>11 to get to relocate to New Jersey?</p> <p>12 A. I don't know that I was aware of it.</p> <p>13 Q. You don't remember --</p> <p>14 A. I don't recall that I was aware of it.</p> <p>15 Q. Do you recall that there was an efforts</p> <p>16 to attract a company called Subaru?</p> <p>17 A. To retain -- to retain Subaru, yes, I</p> <p>18 don't recall when that process started.</p> <p>19 Q. Do you know whether or not this</p> <p>20 provision was added for a specific company?</p> <p>21 A. I do not.</p> <p>22 Q. And during the course of time that you</p> <p>23 were discussing this, was there any discussion</p> <p>24 within EDA about the propriety of having what I'm</p> <p>25 going to call special-purpose legislation? Do you</p>	<p style="text-align: right;">Page 243</p> <p>1 Lizura - examination/Walden</p> <p>2 know what I mean by special-purpose legislation?</p> <p>3 A. I do.</p> <p>4 Q. Explain for us what it is.</p> <p>5 A. It's a colloquial term that's used</p> <p>6 from time to time, that lawyers use, that would</p> <p>7 describe a certain kind of legislation.</p> <p>8 Q. But is it the kind of legislation that</p> <p>9 benefits a single person or company?</p> <p>10 A. That's what I'm trying to say.</p> <p>11 Q. And do you know whether or not that is</p> <p>12 Constitutionally permissible or not?</p> <p>13 A. I believe it's not.</p> <p>14 Q. It's not. Okay. So I'm going to go to</p> <p>15 number 5. So again, just for the sake of time, the</p> <p>16 definition of "Transit-Oriented Development" was</p> <p>17 modified to include, for projects located in a</p> <p>18 Garden State Growth Zone qualified business</p> <p>19 facilities, "Located within a one-mile radius</p> <p>20 surrounding the midpoint of a New Jersey Transit</p> <p>21 Corporation, Port Authority Transit Corporation, or</p> <p>22 Port Authority Trans-Hudson Corporation rail, bus</p> <p>23 or ferry station platform area, including all light</p> <p>24 rail stations." That's quite a specific change.</p> <p>25 A. This may have been what was in the</p>
<p style="text-align: right;">Page 244</p> <p>1 Lizura - examination/Walden</p> <p>2 transit hub.</p> <p>3 Q. Do you remember who it was that added</p> <p>4 this?</p> <p>5 A. I did not.</p> <p>6 MR. WALDEN: Just for the record, it</p> <p>7 was Colin Newman. Sorry, my apologies.</p> <p>8 Q. Did you agree with this from a policy</p> <p>9 perspective?</p> <p>10 A. Yes.</p> <p>11 Q. Why, just explain to us, and try to</p> <p>12 use, if you don't mind, try to break it down simply</p> <p>13 because the language even for a lawyer like me is a</p> <p>14 bit impenetrable. It's basically if you're located</p> <p>15 in a particular area that has certain transit --</p> <p>16 A. Facilities. So we had, as a good</p> <p>17 policy, we were trying to incent development in</p> <p>18 and around train stations --</p> <p>19 Q. And this would support that. So are</p> <p>20 you aware of whether or not there was a specific</p> <p>21 company that needed this change?</p> <p>22 A. I would not.</p> <p>23 Q. I want to just call out the change</p> <p>24 because in the prior version of the bill, right,</p> <p>25 the other language about the transit-oriented hub,</p>	<p style="text-align: right;">Page 245</p> <p>1 Lizura - examination/Walden</p> <p>2 etc., was there. The only change in this bill --</p> <p>3 I'm just going to call it up here, give me one</p> <p>4 second -- so prior to this addition, do you agree</p> <p>5 that the language said, "Transit-oriented</p> <p>6 development means a qualified business facility</p> <p>7 located within a half-mile radius surrounding train</p> <p>8 stations"?</p> <p>9 A. Yes.</p> <p>10 Q. And this provision changed that because</p> <p>11 it said, "Transit-Oriented development means a</p> <p>12 qualified business facility located within a</p> <p>13 half-mile radius," new language, "Or one mile</p> <p>14 radius for projects located in a Garden State</p> <p>15 Growth Zone."</p> <p>16 A. Yes.</p> <p>17 Q. So, again, is this -- what would be the</p> <p>18 policy reasons for expanding from a half-mile to a</p> <p>19 mile for Garden State Growth Zones?</p> <p>20 A. What I would say is that Garden State</p> <p>21 growth zones being the most depressed cities in</p> <p>22 those categories, throughout this bill things were</p> <p>23 targeted to expand the eligibility and expand, you</p> <p>24 know, the -- the qualifications and requirements</p> <p>25 for those locations and this would be a benefit</p>

<p style="text-align: right;">Page 246</p> <p>1 Lizura - examination/Walden</p> <p>2 to -- more sites become eligible.</p> <p>3 Q. So in other words, there's a bigger</p> <p>4 area where a locale that's struggling economically,</p> <p>5 even if it's a mile away, you want to incent that</p> <p>6 development.</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay, why don't we go to number 6. So</p> <p>9 this provision, if you look at number 6, added an</p> <p>10 increase in tax credits if the number of new</p> <p>11 full-time jobs is in excess of one thousand, it</p> <p>12 increases the award to \$1,500 per year?</p> <p>13 A. Correct.</p> <p>14 Q. And that's \$1,500 per year per job.</p> <p>15 A. Correct.</p> <p>16 Q. Can you please explain for us the</p> <p>17 policy implications behind this change.</p> <p>18 A. There was -- there's a belief as you</p> <p>19 can see through the whole thing that larger job</p> <p>20 projects have more economic impact to the region.</p> <p>21 So better to attract a company with a thousand</p> <p>22 more jobs than five hundred jobs. So the bill</p> <p>23 allowed for bonuses on top of the base award one</p> <p>24 that would increase a total award based on the</p> <p>25 number of new jobs and...</p>	<p style="text-align: right;">Page 247</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. Okay. Now, were there provisions as</p> <p>3 far as you knew in the Economic Opportunity Act of</p> <p>4 2013 that allowed, for example, companies moving</p> <p>5 into the same building or companies that were all</p> <p>6 part of the same building project, were they</p> <p>7 allowed to aggregate their jobs for the purposes of</p> <p>8 achieving the thousand-dollar threshold?</p> <p>9 A. I don't believe so.</p> <p>10 MR. WALDEN: And, if I said this</p> <p>11 already, just for the record, Kevin Sheehan</p> <p>12 made this change.</p> <p>13 Q. Okay, so let's go to number 7.</p> <p>14 Actually, you know what? I'm sorry. Oh, yes,</p> <p>15 okay. So the language was added --</p> <p>16 MR. WALDEN: -- excuse me, one second.</p> <p>17 (A pause in the proceedings.)</p> <p>18 Q. So I believe this is a modification of</p> <p>19 the definition of qualified projects.</p> <p>20 A. That's bonuses. It's --</p> <p>21 Q. I'm sorry, you're right. I was looking</p> <p>22 at the wrong provision. Okay. So the bonuses</p> <p>23 added here, if I could just read it, "For a project</p> <p>24 located within a half-mile of any light rail</p> <p>25 station constructed after the effective date of</p>
<p style="text-align: right;">Page 248</p> <p>1 Lizura - examination/Walden</p> <p>2 this act, an increase of \$2,000 per year," is that</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Is that a bonus of two thousand dollars</p> <p>6 per year per job?</p> <p>7 A. Right.</p> <p>8 Q. So would you agree with me that this is</p> <p>9 one of the biggest bonuses in the Economic</p> <p>10 Opportunity Act of 2013?</p> <p>11 A. It is.</p> <p>12 Q. What is the policy behind only</p> <p>13 including companies that are located within a</p> <p>14 half-mile of any light rail station to be</p> <p>15 constructed in the future?</p> <p>16 A. I'm not sure.</p> <p>17 Q. Did you understand the policy behind</p> <p>18 this change when you read it?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you recall who added this?</p> <p>21 A. I don't.</p> <p>22 MR. WALDEN: Let the record reflect it</p> <p>23 was Kevin Sheehan.</p> <p>24 Q. Now, let me just ask you this: As you</p> <p>25 sit here now, do you know whether or not any</p>	<p style="text-align: right;">Page 249</p> <p>1 Lizura - examination/Walden</p> <p>2 company was able to take advantage of this</p> <p>3 provision?</p> <p>4 A. I don't recall that.</p> <p>5 Q. You don't recall.</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you recall whether Holtec was able</p> <p>8 to take advantage of this provision?</p> <p>9 A. Holtec uses the capital investment</p> <p>10 alternative.</p> <p>11 Q. We may have to revisit that with you.</p> <p>12 I know we're not prepared for Holtec, so, for</p> <p>13 another day.</p> <p>14 Could you go to 8 now, please. This</p> <p>15 says it's another modification of bonus. And then</p> <p>16 it says, "For a marine terminal project with the</p> <p>17 municipality located outside the Garden State</p> <p>18 Growth Zone but within the geographical boundaries</p> <p>19 of the port" -- I'm sorry, "The South Jersey Port</p> <p>20 District, an increase of \$1,500 per year, and</p> <p>21 that's \$1,500 per year per job.</p> <p>22 A. Correct.</p> <p>23 Q. Do you recall what the policy was</p> <p>24 behind this project?</p> <p>25 A. I do not.</p>

<p style="text-align: right;">Page 250</p> <p>1 Lizura - examination/Walden</p> <p>2 Q. Do you agree with it?</p> <p>3 A. I don't have a feeling about it.</p> <p>4 Q. Doesn't it seem like an oddly specific</p> <p>5 thing to add to a tax incentive bill, in your</p> <p>6 experience?</p> <p>7 A. Not necessarily. I mean, the bill is</p> <p>8 targeted geographically, so they are targeted,</p> <p>9 just like we said at the beginning, to incent</p> <p>10 people to invest in the particular location. I</p> <p>11 don't know where that is, per se. I mean, I</p> <p>12 doesn't surprise me.</p> <p>13 Q. All right. Listen, I'm going to ask</p> <p>14 you about another exchange that is reflected in a</p> <p>15 different document. So if you can, can you just go</p> <p>16 to tab 3 of your binder.</p> <p>17 A. Um-hum.</p> <p>18 Q. Do you see the document?</p> <p>19 A. I do.</p> <p>20 Q. Do see that this is a back-and-forth</p> <p>21 between, among other people, you and Colin Newman?</p> <p>22 A. Yes.</p> <p>23 Q. Does that refresh your recollection</p> <p>24 that there were lots of correspondence around this</p> <p>25 time concerning different provisions?</p>	<p style="text-align: right;">Page 251</p> <p>1 Lizura - examination/Walden</p> <p>2 A. Sure.</p> <p>3 Q. I'm going to read the language into the</p> <p>4 record because I'm not really sure that you can see</p> <p>5 it on the screen. Is it on the screen? No. Okay.</p> <p>6 Doesn't matter. Let me just read it into the</p> <p>7 record.</p> <p>8 "This particular e-mail is from an</p> <p>9 individual at EDA to Colin Newman and you, copied</p> <p>10 to another person on September 9th of 2014. And</p> <p>11 the language says, "No, I believe it follows the</p> <p>12 intent of the act to include the 'phantom tax</p> <p>13 notion' for the NBT that Phil," and another person</p> <p>14 that I won't name, "laid out in the original bill</p> <p>15 draft." Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. As you sit there now, do you know who</p> <p>18 Phil is?</p> <p>19 A. I assume that's Phil Norcross.</p> <p>20 Q. In any event, do you remember whether</p> <p>21 or not Phil Norcross was having input into the bill</p> <p>22 draft that we were just reviewing a couple of</p> <p>23 minutes ago?</p> <p>24 A. I don't recall.</p> <p>25 Q. You don't recall.</p>
<p style="text-align: right;">Page 252</p> <p>1 Lizura - examination/Walden</p> <p>2 A. No.</p> <p>3 Q. And do you know as you sit there today,</p> <p>4 what role, if any, Phil Norcross played in "the</p> <p>5 original bill draft"?</p> <p>6 A. No.</p> <p>7 Q. So can you, do you remember and can you</p> <p>8 explain to us -- I don't want to go through the</p> <p>9 document, it would take too long, and I'd like to</p> <p>10 get you off the stand by 4:15. Can you explain to</p> <p>11 us, do you have a recollection of this whole</p> <p>12 phantom tax issue?</p> <p>13 A. I do.</p> <p>14 Q. Can you explain it to us?</p> <p>15 A. I can, and I apologize. The NBT</p> <p>16 stands for net benefit test. Net benefit test is</p> <p>17 an economic input/output line which we designed in</p> <p>18 conjunction with Jones Lang LaSalle. And it was a</p> <p>19 test that we used to satisfy the provisions of the</p> <p>20 law that every project must have at least 110</p> <p>21 percent net benefit test except in the City of</p> <p>22 Camden where it's a hundred percent.</p> <p>23 And what it does is, it's designed to</p> <p>24 project the economic activity for a particular</p> <p>25 investment in a project. And that would be</p>	<p style="text-align: right;">Page 253</p> <p>1 Lizura - examination/Walden</p> <p>2 different depending on the location in the state,</p> <p>3 the industry, the types of jobs, the salaries, and</p> <p>4 a bunch of different inputs.</p> <p>5 We used a federally-produced system</p> <p>6 called RIMS to calculate economic output.</p> <p>7 Q. I'm sorry, this is -- I completely</p> <p>8 understand everything you're saying, but would it</p> <p>9 be okay if I just asked you some leading questions</p> <p>10 and if I'm wrong, correct me? Just so that I can</p> <p>11 try in the interests of time?</p> <p>12 A. We're getting close.</p> <p>13 Q. No problem. It's not that you're</p> <p>14 taking too long. It's that it's really</p> <p>15 complicated. So there was a simpler way to explain</p> <p>16 it, but if you want to keep going, I don't want to</p> <p>17 cut you off.</p> <p>18 A. So with that output, we were</p> <p>19 projecting the amount of revenue the state would</p> <p>20 get in lieu of taxes. So at the end of the day,</p> <p>21 that law was used to try to line up the benefits</p> <p>22 of a project versus the costs of the tax credits.</p> <p>23 Q. So NBT is just a way to determine</p> <p>24 whether the state's getting a good ideal?</p> <p>25 A. Correct.</p>

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 2 Q. And good deal in Camden is defined as
 3 paying for itself?
 4 A. Yes.
 5 Q. And a good deal everywhere else in the
 6 state is defined as a ten percent profit.
 7 A. At least.
 8 Q. Now, how do phantom taxes -- well,
 9 first of all, what is a phantom tax?
 10 A. It's a made-up term that we use to
 11 describe in the Economic Opportunity Act the
 12 provision that exempted projects from property
 13 taxes and other taxes and there are other laws
 14 in -- UEZ and other laws that exempted projects
 15 from paying taxes.
 16 And the -- the connection was working
 17 closely with the Attorney General office, which is
 18 the reference here, is that the law allowed that
 19 we could count back those taxes that were
 20 otherwise exempted in the calculation of the net
 21 benefit test, so that companies could get the
 22 benefit from the program to incent their
 23 investment in the City.
 24 Q. Okay. But can you explain -- can I ask
 25 you a leading question?

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 2 A. Yes.
 3 Q. So I'm not asking you and I didn't mean
 4 to elicit that you sought legal advice on this.
 5 I'm asking you a different question.
 6 Did this one concern you enough that
 7 you wanted to seek legal advice on it?
 8 A. We did seek legal advice, so I don't
 9 know how it's a concern -- we sought legal advice
 10 on a lot of things. It was certainly a, not
 11 standard fare, right? So it isn't standard fare
 12 in -- so because we wanted to make sure we were on
 13 legal footing, we asked the Attorney General,
 14 so --
 15 Q. All right. So I'm going to ask you the
 16 question again because I'm not sure that you
 17 answered it. I'm sure you're trying. I'm talking
 18 about you, Tim Lizura, reading this provision. You
 19 remember this provision, right?
 20 A. I do.
 21 Q. So my question is, when you read it,
 22 did it seem to you like this stepped over a line?
 23 A. I have to tell you, no, I
 24 understand -- the intent of the law was to get
 25 people to invest in the City of Camden, right? So

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 2 A. Sure.
 3 Q. And again, I'm asking about -- what I'm
 4 concerned about or curious about is tax policy.
 5 That's what I care about, right? So my question to
 6 you from a tax policy perspective is, do I
 7 understand this that this essentially allows the
 8 program applicant to count costs that they really
 9 don't pay?
 10 A. That they can count in the benefit of
 11 the project that they don't pay.
 12 Q. So in other words, it is a way in a
 13 sense to artificially inflate the benefit to the
 14 state, so that they pass or surpass the net benefit
 15 that's required depending on where you are.
 16 A. Yes.
 17 Q. Okay. Whose idea was that?
 18 A. I don't recall.
 19 Q. Do you remember whether or not that was
 20 proposed by someone from Parker McCay?
 21 A. I don't recall that.
 22 Q. I understand that the Attorney General
 23 signed off. Obviously, I am not asking you for --
 24 because the Attorney General is the lawyer for the
 25 EDA, right?

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 2 if you had a provision in the law which undercuts
 3 the ability to get people to do that by
 4 inadvertently having this kind of disconnect, that
 5 while you could get to a place where phantom tax
 6 makes sense. So I understand the -- I understand
 7 the notion of it, and I understand why in the
 8 context of Camden, you were doing this.
 9 Q. But in the context of Camden,
 10 essentially, do I understand this to be an
 11 exception to the net benefit test? This
 12 essentially allowed projects to get through even
 13 though they weren't paying for themselves.
 14 A. I would say that's a pretty accurate
 15 statement.
 16 Q. Do you know how many different
 17 companies advantaged themselves by the phantom tax
 18 provisions of the law?
 19 A. I don't know how many.
 20 Q. Do you know of any as you sit here now?
 21 A. I recall we had projects that took
 22 advantage of it.
 23 Q. Do you recall any of the projects as
 24 you sit there now?
 25 A. I would expect that the projects that

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2 used the capital investment alternative would be
3 the ones that would be the ones that --

4 Q. But do you remember any of those as you
5 sit here?

6 A. Yes, sure.

7 Q. Who?

8 A. Holtec, The Sixers, American Water,
9 Subaru, Connor Strong, Michaels. NFL.

10 Q. Okay. So I'm going to ask you a
11 different question. Do you know whether or not
12 Parker McCay represents all those companies?

13 A. I recall they represent some, some
14 role in most of those.

15 Q. So what does it say to you about,
16 again, we're talking about this material factor
17 requirement, meaning I'm actually making a choice,
18 right? I'm making a choice to either go to Camden
19 or go somewhere else.

20 We're going to get to this in a minute,
21 but what does it say to you about material factor
22 if in fact, a law firm was put -- I'm not saying
23 this happened, but a law firm was putting in
24 changes for specific companies into the bill?
25 Would that be an indicator?

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2 You're a very experienced guy, you
3 supervised the underwriting department. If you
4 knew that information when you were vetting an
5 application, "By the way, I just want to be honest
6 with you, our lawyer put this provision in for us,"
7 would that have an impact on your view of whether
8 or not the business decision had been made by the
9 time the act was passed by the legislature?

10 A. No.

11 Q. All right. So I have two more subjects
12 to talk to you about, and I'm going to do you a
13 huge favor which is, you know that there's one
14 issue with respect to material factor that, where
15 your perspective is different than what we've heard
16 from other people, so I want to try to tease that
17 out in a leading way if you don't mind, and I will
18 be faithful to what you told me, but just, we have
19 one more witness and I don't want to keep people
20 past 5 o'clock if we can get around it.

21 So we heard testimony today that, as
22 the EDA was administering the program for
23 businesses relocating in-state to Camden, say they
24 were going from Jersey City or wherever they were
25 coming from to Camden. We heard testimony today

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2 that EDA required that they show that the jobs were
3 at risk, and that they submit proof that an
4 out-of-state location was bona fide, suitable and
5 available. I think that's it.

6 MR. WALDEN: Chairman, a fair summary
7 of the testimony? Okay.

8 Q. And so we looked back at every Camden
9 application since this bill came into law, to
10 today, and there were 32 and of those 32 -- I'm
11 sorry, 31, correct? I'm sometimes wrong, there are
12 31 applications and of those 31 applications there
13 were 30 of them, I'm talking about applications
14 where there was an in-state move to Camden, from
15 Marlton or -- thirty of them that actually said
16 that the jobs were at risk and they were
17 considering an out-of-state location, and one of
18 them said they were going to eliminate jobs in
19 Camden, which is a completely different thing,
20 right, because it qualifies under a different part
21 of the statute, right? Okay.

22 So the testimony that we heard today
23 aligns with the reality that all projects moving to
24 Camden actually did say jobs are at risk.

25 Now, you have a perspective on why that

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2 happened, is that true?

3 A. Yes.

4 Q. Am I correct in saying that in your
5 interpretation, the statute itself does not require
6 for those kinds of projects that they actually show
7 an out-of-state location?

8 A. My interpretation and guidance from
9 the Attorney General office.

10 Q. Again, you're not at the EDA anymore so
11 you can't waive the privilege. So please stop
12 saying what the Attorney General advised on. We'll
13 talk to the EDA about whether or not they will
14 waive the privilege and allow us some factfinding
15 around that.

16 A. Okay.

17 Q. So put that aside. I'm just, I'm
18 talking about your interpretation and I'm going to
19 try to figure out why there seems to be two
20 different interpretations of this within EDA. But
21 you had -- even though it was not a requirement, in
22 your view, statute, whether the Attorney General
23 agreed or not, you offered a practical reason why
24 companies would have a motivation to consider
25 out-of-state alternatives and include that in the

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2 application anyway.

3 A. Yes.

4 Q. So now I've done my leading. Can you
5 explain that to us?

6 A. Yes.

7 Q. Thank you.

8 A. My recollection of whether it met the
9 net benefit test was, the net benefit test was a
10 statewide test, and that would suggest, or that
11 would then require that the jobs would be at risk
12 of leaving New Jersey in order to include economic
13 impact of those jobs under the net benefit test.
14 If there was not a risk of leaving the state, we
15 would include all the other drivers of the net
16 benefit test except the economic activity from the
17 employees, which is largest driver of the economic
18 output.

19 Q. I just want to pause there for a second
20 because you just said something that's important,
21 and I'll tell you why in a second. But from your
22 experience, the job credit that one gets is the
23 largest part of an award.

24 A. On the net benefit test.

25 Q. On the net benefit test. Go ahead.

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2 determine whether it was bona fide, it was
3 suitable, whether it was available in reality,
4 what's the consequences of that?

5 A. So my impression of that would be that
6 there were filing false documentation with a
7 government entity which is bad.

8 Q. I appreciate your perspective. I asked
9 a poor question, and I'm sorry, I'll rephrase it.
10 From the perspective of the award, if someone was
11 applying for a tax incentive award, and an
12 underwriter uncovered this in the context of
13 vetting the application, what are the consequences
14 for the applicant in the hypothetical that I
15 described?

16 A. If we on the board couldn't make a
17 finding of at-risk, then the net benefit test
18 would be -- the net benefit test would be
19 dramatically reduced and the award would be
20 dramatically reduced.

21 Q. Again, I apologize in the same way, my
22 questions are getting less crisp. But what I think
23 I was asking was, if an underwriter actually
24 discovered evidence of fraud, would that just
25 reduce the award or would that disqualify the

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2 A. So for practical purposes, if you
3 wanted -- if you needed to maximize the award in
4 order to make a decision to move to the City of
5 Camden, you would have to show the out-of-state
6 location and that would then -- that would then
7 allow you to satisfy the net benefit test
8 provision.

9 Q. So is this another way of saying, in
10 your view, if you're moving jobs in-state to
11 Camden, you get no credit on the net benefit test
12 for the jobs?

13 A. Without an out-of-state -- without an
14 at-risk finding.

15 Q. When you say "at-risk finding," meaning
16 the jobs are at risk of leaving the state.

17 A. Correct.

18 Q. Okay. Now, so regardless of the
19 motivation that caused these applicants to put on
20 the application that there was an at-risk finding,
21 and that they were considering a location, what are
22 the consequences if there was a company that was
23 making it up, they really did not evaluate another
24 location, they just found another place, to just
25 put it on the application, they did no diligence to

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2 applicant?

3 A. Oh, disqualify the applicant, and we
4 would refer that to appropriate channels.

5 Q. And from your recollection during your
6 time there, did that ever happen?

7 A. It did.

8 Q. That was a new question that I didn't
9 ask you before, so I may follow up with you
10 afterwards on that hypothetical.

11 Okay, so just for the last question on
12 this, I'm going to ask you the unfair question.
13 You don't even know who it was that probably
14 testified -- can you help us understand why there
15 appear to be two different interpretations within
16 the EDA, one that suggests that an adverse
17 designation is required to every single applicant
18 no matter where in the state they are, and your
19 interpretation, which is that a net benefit test
20 requires it, or at least strongly motivates it, but
21 it's not a requirement?

22 A. Sure. My exception so that is, it's
23 an extraordinarily complicated program and there
24 are a lot of shorthand -- shorthand -- shortcuts
25 to describe how things work, whether they be

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2 colloquialisms to describe things, or kind of
3 practical answers to questions. So for -- if I
4 was a staff person working in the field, I would
5 not get into that level of detail, because why
6 make it more complicated? When we make it an
7 extraordinarily complicated program --

8 Q. As the prior COO, let me just ask you
9 this question from an administrative perspective.
10 The EDA had authority to administer the program,
11 correct?

12 A. Correct.

13 Q. If the EDA was telling people it's
14 required, you have to show that the jobs are at
15 risk, you have to show that you are considering an
16 alternate location, that's important, right?
17 Whether or not the statute required it or not, my
18 question is, did the EDA have authority in order to
19 interpret the statute to make this a requirement?

20 A. We can't -- no, we could not change
21 the law to do that. And I think you're aware that
22 there was one company that we did approve, not in
23 Camden, that availed themselves of that provision
24 for a different Garden State Growth Zone that
25 didn't make that assertion. So in the world of a

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2 thousand approvals, 30 for Camden, one for
3 Atlantic City, this topic doesn't come up that
4 much. So -- and I would not take umbrage to my
5 colleagues taking a shortcut in that in the way of
6 describing it.

7 Q. Okay. That was very clear, thank you
8 very much, appreciate it. So I just have one more
9 topic for you, add then we'll see if the chairman
10 has any questions for you.

11 Again, I'm doing to try to streamline
12 this if I can.

13 While you were there, do you recall
14 that there was the employee named David Sucsuz who
15 filed an EEOC complaint?

16 A. I do.

17 Q. Do you recall that that complaint
18 alleged discrimination?

19 A. I do.

20 Q. And is it fair to say that Mr. Sucsuz
21 was eventually terminated?

22 A. Yes, fair to say.

23 Q. And fair to say that the person that
24 investigated the discrimination allegation found
25 that there was no nexus between the conduct that he

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2 was alleging and his termination?

3 A. I believe that's true.

4 Q. Okay. So, and did you also become
5 aware while you were there that, subsequent to his
6 termination, Mr. Sucsuz filed a complaint that made
7 new allegations?

8 A. I was.

9 Q. Did you read his complaint?

10 A. I don't recall reading his complaint.

11 Q. Okay. Do you recall whether or not the
12 complaint made new allegations about specific
13 instances of potential fraud and misconduct at the
14 EDA?

15 A. I'm aware of that now.

16 Q. You weren't aware of that at the time?

17 A. I don't recall. It's speculative, but
18 I don't recall.

19 Q. Okay. But during the time that you
20 were there, were you aware that your boss, Michelle
21 Brown, was deposed?

22 A. Yes.

23 Q. Were you aware that others at the EDA
24 were deposed?

25 A. Yes.

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2 Q. And it was an active litigation that
3 was going on including the trial -- you weren't
4 there the whole time, but --

5 A. I was there the whole time.

6 Q. Oh, you were, I'm sorry. During an
7 audit that the comptroller was doing?

8 A. Ask me the question?

9 Q. The litigation was active and ongoing
10 even during 2018 when the comptroller was doing an
11 audit?

12 A. The beginning of the audit, yes.

13 Q. Now, my question to you is this: Do
14 you recall a conversation among anyone in the
15 senior leadership team with Fred Cole about whether
16 or not Mr. Cole should disclose the existence of
17 this litigation to the comptroller during the
18 audit?

19 A. I don't recall the conversation.

20 Q. You don't recall a conversation at all?

21 A. No.

22 Q. Do you recall knowing that the
23 comptroller asked during a kickoff meeting whether
24 or not there was any pending or settled litigation
25 that involved a former employee making allegations

<p style="text-align: right;">Page 270</p> <p>1 Lizura - examination/Walden</p> <p>2 of fraud?</p> <p>3 A. I don't recall necessarily that</p> <p>4 specific request.</p> <p>5 Q. Just -- I know I don't usually pick at</p> <p>6 your answers, but what do you mean when you say you</p> <p>7 don't necessarily --</p> <p>8 A. I don't recall that.</p> <p>9 Q. Do you recall a question like it?</p> <p>10 A. No, I don't recall particulars of the</p> <p>11 things that may have been asked for in that -- in</p> <p>12 that meeting at this time.</p> <p>13 Q. Okay. So are you aware as you sit here</p> <p>14 now that that complaint was never disclosed to the</p> <p>15 comptroller during the audit?</p> <p>16 A. I know that now. I don't know that</p> <p>17 firsthand.</p> <p>18 Q. So I'm going to ask you again kind of</p> <p>19 the unfair question. Do you know how that</p> <p>20 happened? Do you have any insight, having been</p> <p>21 there in a senior level position, with litigation</p> <p>22 that is unique, and executives are getting</p> <p>23 literally deposed, there's a trial going on and</p> <p>24 somehow that information is requested by the</p> <p>25 comptroller and not disclosed?</p>	<p style="text-align: right;">Page 271</p> <p>1 Lizura - examination/Walden</p> <p>2 A. I'm not sure of the question, but I do</p> <p>3 not know how it happened. I think your question</p> <p>4 was, how does it happen. It -- in my time -- so</p> <p>5 to be very specific, while I was there at the</p> <p>6 beginning of the audit, I was not there when the</p> <p>7 audit kicked into full gear or when it ended.</p> <p>8 Q. Oh, I'm sorry. That was my</p> <p>9 understanding before, you said he you were there</p> <p>10 the whole time.</p> <p>11 A. I was there the whole time for the</p> <p>12 Sucsuz lawsuit. So if Sucsuz's lawsuit was</p> <p>13 settled -- not settled, it was, what's the term, a</p> <p>14 verdict?</p> <p>15 Q. There was a verdict.</p> <p>16 A. There was a verdict on the Sucsuz</p> <p>17 lawsuit while I was there. So the lawsuit</p> <p>18 was ended, and the judge ruled in our favor, the</p> <p>19 jury ruled in our favor --</p> <p>20 Q. Yes.</p> <p>21 A. That was the end of that lawsuit.</p> <p>22 Q. Just slow down a little bit. I think</p> <p>23 he may be having trouble.</p> <p>24 A. All right. My last day was in the</p> <p>25 middle of July, and I announced my -- that I was</p>
<p style="text-align: right;">Page 272</p> <p>1 Lizura - examination/Walden</p> <p>2 retiring in June so I had to become less engaged</p> <p>3 in those sort of things. The audit kicked in</p> <p>4 further then, so I was not there for most of that</p> <p>5 audit.</p> <p>6 Q. So then, I wouldn't even ask you that</p> <p>7 if I couldn't remember your termination date, so I</p> <p>8 apologize for that, but I thought you were saying</p> <p>9 you were there the whole time. So let me change</p> <p>10 the subject, then, and then we'll be done, unless</p> <p>11 the chairman has any questions. So here's my</p> <p>12 question:</p> <p>13 You were there for the whole verdict.</p> <p>14 Do you remember that the jury actually returned a</p> <p>15 verdict saying that Sucsuz had a reasonable basis</p> <p>16 to believe that EDA personnel had violated the law?</p> <p>17 Were you aware of that?</p> <p>18 A. I was not aware of that.</p> <p>19 Q. All right. So help us understand this:</p> <p>20 We heard testimony earlier today from someone who</p> <p>21 does remember the allegations, reviewed the</p> <p>22 complaint, took notes of it all, and his statement</p> <p>23 was that to this day, there's never been an</p> <p>24 investigation within EDA to determine whether or</p> <p>25 not those specific allegations are true or not.</p>	<p style="text-align: right;">Page 273</p> <p>1 Lizura - examination/Walden</p> <p>2 A. I believe that to be true.</p> <p>3 Q. Okay. But why?</p> <p>4 A. My assessment of why?</p> <p>5 Q. Yes. And maybe --</p> <p>6 A. Maybe it's bad on me, having been the</p> <p>7 COO. But through the entire -- we gave no</p> <p>8 credibility to the allegations that Mr. Sucsuz was</p> <p>9 making. We had our opinion was that it was -- it</p> <p>10 was without complete merit and they we didn't do</p> <p>11 it, there wasn't anything to investigate.</p> <p>12 Q. I understand that, I understood that</p> <p>13 from when you were interviewed, but here's the part</p> <p>14 that I don't understand. If you take that</p> <p>15 perspective and you say, "This guy's a liar, right?</p> <p>16 Everything he says is untrue," knowing that the</p> <p>17 case is going to have to be tried, wouldn't you</p> <p>18 want to do an internal investigation so that you</p> <p>19 could show that all of the specific -- because he</p> <p>20 mentions specific companies and very specific</p> <p>21 issues. But to demonstrate that the specific</p> <p>22 allegations were untrue and then you could impeach</p> <p>23 him when he testified?</p> <p>24 A. We clearly didn't think that was</p> <p>25 important to do. We didn't do it.</p>

Lizura - examination/Walden

Q. Okay. So now, help us understand this. Was there actually a decision where someone, where this issue was considered, the senior leadership team said, "Hey listen, we have got a crisis on our hands, we've got this lawsuit that's now accusing us of fraud, we need to figure out if we're going to do an internal investigation," I don't want to go on too long -- is this the only time in your 22-year career anything like this ever happened?

A. It is.

Q. Okay, was there a crisis management meeting after it was filed and it was reported in the press?

A. So, I don't want to completely minimize this. We talked about it at senior leadership team meetings, the status of the lawsuit, we considered his various proposals for payment option and we discounted any of those options. So we discussed the lawsuit. And that was to the extent of my recollection.

I say that with the fact that I know our senior vice-president of operations, Fred Cole, he was charged with running point on this lawsuit. So I don't know what he did,

Lizura - examination/Chen

necessarily, outside of the conversation.

Q. Okay. But in the conversations that you had, do you remember anyone raising the issue of, "Maybe we should investigate this so that we can prove that it's not true"?

A. No, we didn't.

Q. No --

A. I don't recall a conversation like that.

Q. So you don't have a recollection of a specific person saying, "No, don't do an investigation."

A. Correct.

Q. Okay.

PROF. CHEN: I just have a question, more of terminology in my mind.

EXAMINATION BY

PROF. CHEN:

Q. You referred to several parts of the programs that are Camden-specific.

A. Yes.

Q. There are other parts of programs -- parts of the New Jersey program that apply special rules and requirements to any of the cities that

Lizura - examination/Chen

are within the Garden State Growth Zone?

A. Correct.

Q. And that would be Camden, Trenton Paterson and Passaic?

A. Passaic.

Q. And I think for another reason, Atlantic City is also included in another piece of legislation.

A. Correct.

Q. When you were talking about the Urban Transit Hub tax credit, and when you were talking a moment ago that, with Mr. Walden, about the phantom tax issue, those were Camden-significant.

A. Camden, correct.

Q. And so the other cities that were part of the Garden State Growth Zone would not be eligible for growth --

A. Correct.

Q. -- off the tax records. Okay.

MR. WALDEN: You know, Chairman, I don't want to say that the -- I can't say for sure it was only Camden phantom tax, because the property tax exception portion of the bill was -- all growth zones were

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eligible for, and they could opt into, and I'm not sure that phantom tax was embedded in that section of the law, I don't want to state --

EXAMINATION BY

PROF. CHEN:

Q. What about the part of the statute that limits the program, and the one I was looking at is the material factor requirement that you were talking with Mr. Walden before, earlier, that refers to projects in the Garden State Growth Zone that qualified as a MRERA, M-R-E-R-A?

A. Correct.

Q. Do you know what MRERA refers to?

A. I do.

Q. What is that?

A. I mentioned in my opening remarks, Municipal Economic Recovery Act.

Q. A specific act passed by the legislature. Do you have an understanding of to which city or cities that act applies?

A. The only city that I'm aware that applied to was the City of Camden.

Q. Would it be fair to say that when

<p style="text-align: right;">Page 278</p> <p>1 Lizura - examination/Chen</p> <p>2 legislation uses the term "Garden State Growth</p> <p>3 Zone," that qualifies as a MRERA, that that is</p> <p>4 generally understood only to refer to the City of</p> <p>5 Camden?</p> <p>6 A. No -- sorry, yes, yes, yes. Yes.</p> <p>7 Q. And that would be the understanding</p> <p>8 within EDA that that is short of a term of art or</p> <p>9 shorthand term for Camden.</p> <p>10 A. Yes.</p> <p>11 PROF. CHEN: Thank you.</p> <p>12 MR. WALDEN: Thank you for all the</p> <p>13 time we spent beforehand and today.</p> <p>14 (Whereupon, the witness was excused.)</p> <p>15 B R A N D O N M c C O Y , having been first</p> <p>16 duly sworn, was examined and testified as</p> <p>17 follows:</p> <p>18 EXAMINATION BY</p> <p>19 MS. PATEL:</p> <p>20 Q. Good afternoon, Mr. McCoy.</p> <p>21 A. How are you?</p> <p>22 Q. Like the chairman, I thank for you your</p> <p>23 patience and staying here with us today. I'm</p> <p>24 asking, as Prof. Chen explained before, one of the</p> <p>25 things that we're trying to better understand is</p>	<p style="text-align: right;">Page 279</p> <p>1 McCoy - examination/Patel</p> <p>2 the influence and the involvement of the many</p> <p>3 stakeholders and policy experts that were involved</p> <p>4 in the design and passage of the Economic</p> <p>5 Opportunity Act, so we're hoping that your policy</p> <p>6 background and your experience at New Jersey Policy</p> <p>7 Perspectives can help let us know a little bit</p> <p>8 about that process. So can you please explain your</p> <p>9 educational and policy background for us?</p> <p>10 A. Sure. I have a Bachelor's degree from</p> <p>11 The College of New Jersey in sociology, a Master's</p> <p>12 degree from the Edward J. Bloustein School of</p> <p>13 Community and Public Policy at Rutgers in urban</p> <p>14 planning and public policy, and I have worked as a</p> <p>15 public policy analyst at New Jersey Policy</p> <p>16 Perspective for almost five years now.</p> <p>17 Q. And in what capacity do you work for</p> <p>18 New Jersey Policy Perspective?</p> <p>19 A. I started as a economic policy analyst</p> <p>20 focusing on economic security issues, things like</p> <p>21 the minimum wage and paid sick leave, and then I</p> <p>22 became the director of government and public</p> <p>23 affairs, and as of March 1st, I'm now the</p> <p>24 president.</p> <p>25 Q. And Mr. McCoy, what exactly is New</p>
<p style="text-align: right;">Page 280</p> <p>1 McCoy - examination/Patel</p> <p>2 Jersey Policy Perspective? More specifically, what</p> <p>3 kinds of research projects do you and your time</p> <p>4 tackle?</p> <p>5 A. We are a public policy think tank. We</p> <p>6 do policy analysis and issues in a variety of</p> <p>7 policy areas, including economic security, tax and</p> <p>8 budget policy, healthcare, and immigration,</p> <p>9 sometimes education as well.</p> <p>10 Q. Are you familiar with the Economic</p> <p>11 Development Act of 2013?</p> <p>12 A. Yes.</p> <p>13 Q. And does New Jersey Policy Perspective</p> <p>14 conduct policy research or analysis on that act?</p> <p>15 A. Yes.</p> <p>16 Q. I'm going to refer to that act as EOA</p> <p>17 13. What kind of research have you conducted on</p> <p>18 EOA 13?</p> <p>19 A. Research from our organization has</p> <p>20 focused on the ways that EOA 2013 removed some of</p> <p>21 the protections that we believe were important for</p> <p>22 the state's, the EDA, economic development</p> <p>23 programs, subsidy programs, and sort of keeping</p> <p>24 track and monitoring the amount of corporate tax</p> <p>25 subsidies that the state has awarded over the</p>	<p style="text-align: right;">Page 281</p> <p>1 McCoy - examination/Patel</p> <p>2 years which has increased significantly in size</p> <p>3 and scale.</p> <p>4 Q. I want to talk specifically about,</p> <p>5 picking up from where Mr. Walden left off, about</p> <p>6 exactly the impact of having certain stakeholders</p> <p>7 involved in the draft language of the bill. To add</p> <p>8 a little bit of context to the timing, are you</p> <p>9 familiar with the timing of the passage of the</p> <p>10 Economic Opportunity Act?</p> <p>11 A. Yes, I've seen the dates on which the</p> <p>12 legislation moved through the legislature.</p> <p>13 Q. Just to confirm, is it correct that on</p> <p>14 May 20th, 2013, the EOA 13 was passed by</p> <p>15 the Assembly and sent to the Senate?</p> <p>16 A. I believe, yes.</p> <p>17 Q. And on June 27, 2013, the EOA 13 was</p> <p>18 passed by the Senate and conferred by the Assembly?</p> <p>19 A. Yes.</p> <p>20 Q. And so some of the changes to the draft</p> <p>21 bill that Mr. Walden just walked through, I don't</p> <p>22 know if you sat through the testimony but the dates</p> <p>23 on these changes that were made by the person that</p> <p>24 was making those changes were on June 14th, June</p> <p>25 19th and June 21st, 2013, so it falls within that</p>

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period, between the the assembly passing and the Senate passing the bill.

A. Um-hum.

Q. So from a policy perspective, I wanted to ask for your reaction of, what is your reaction of a private law firm having access to the draft language of a bill right before it's passed and the impact that that would have on the resulting legislation?

A. So I don't think it's uncommon for legislators to ask for outside expertise for help in crafting bills. Legislators are not experts in everything. So seeking that assistance and input perfectly normal. For an individual or entity to directly edit and write a bill, particularly when that individual or entity has significant or sufficient opportunity to benefit financially and otherwise from the edits that they made, I would consider that improper.

Q. Do you believe that having attorneys as subject matter experts is generally important in creating a bill that meets policy goals?

A. Yes, definitely subject matter experts, you know, weighing in. You want to have

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a variety of experts, particularly on something as far-reaching as the EOA 2013, which is dealing with economic development which requires a whole set of experts from urban planners to housing experts to environmental experts, to transportation experts, to sort of finance, development and lending experts. That's a very large undertaking, and you'd want to have input from a variety of those sorts of people.

Q. So going back to what Mr. Lizura had testified to previously, would you consider it bad policy to have, to allow an individual law firm to make those changes right before it was passed without broader access to any stakeholder to have access to amend that language?

A. Yes, to have those changes made in a manner, I mean, if I remember correctly, the size of the the bill grew from about 47 pages to 83 pages, if I remember correctly. To add that much content to the bill, and to not get sufficient input from other experts and other stakeholders in due time, is just not proper practice. I would say that it's not typically normal, I would say it's probably more normal than people are

McCoy - examination/Patel
comfortable with, but it's not a normal process.

Q. And what is the, what you just mentioned that you recall the bill went from 40 to 83 pages, from when to when did the bill expand?

A. If I remember properly looking at the state website, I believe the Senate voted on the changes or the changes were implemented June 24th and then the Senate voted on, actually voted on those changes June 27.

Q. So within the span of three days.

A. Yes. And I remember, I was not at NJ Policy Perspective at the time but looking, I happened to be familiar with this issue and looking back at journalistic reports and articles, you could see several legislators and stakeholders sort of commenting on the fact that they didn't have the time necessary to look through the changes that were made.

Q. And what were some of the policy concerns of having this type of involvement?

A. I think it's, the concerns would be that it was in sort of privatization of the legislative process, and that when you look at the changes that were implemented, it really opened up

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the amount of spending that the state could pursue with regards to the corporate tax subsidies to an award. So previously they were having caps on spending, this removes those caps completely so it was technically an unlimited amount of spending that could occur in these programs.

It did not include important stipulations around reports or opportunities to review spending that had occurred, and didn't have a bunch of best practices that are commonly used across the country at a national level.

Q. You had mentioned that you have a background in economic development policy, and so some of the requirements under the tax incentive programs are requiring companies to prove that but for the tax incentives, they would move outside New Jersey.

And so I ask the question, how seriously could a company considering leaving New Jersey but for the tax incentives, if they directly are, or have counsel on their behalf, adding direct language or provisions into the tax incentive bill? So from, in your expert opinion, how seriously could companies such as the ones that were

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 potentially benefiting earlier, have been
 considering leaving New Jersey?

A. If a company has knowledge and awareness that the stipulations and language of a bill that had been structured in such a way that they would benefit, I would find it hard to believe that they would forego those benefits unless the deal that they would get from other states were significantly better. But considering the size and the scale of New Jersey's corporate tax subsidy program, we pay out, on average, significantly more than other states do, so I find that unlikely.

Q. Historically and generally, does New Jersey Policy Perspective get called upon to offer its expert opinion or policy research during bill drafting in various bills that have to deal with the kind of research that you do?

A. Yes. We, you know, we provide comments and help the legislators think through the structuring of bills with regards to minimum wage, with regards to healthcare, immigration like I mentioned, tax and budget policy, and we also, whenever we do research on these issues and

McCoy - examination/Patel
 publish that, we should make sure that we are making state legislators aware of what our findings have been and make sure that we are saying that these are the things that we think are proper, and the proper thing to pursue in the construction of your bill.

Q. Is the substance of the EOA 13 the kind of bill in substance that your team at New Jersey Policy Perspective would have the expert knowledge to be able to offer substantial information and assistance in the bill drafting?

A. Yes. My predecessor, Jon Whiten, is largely considered by many to be one of the foremost experts on this topic in the State of New Jersey.

Q. And understanding that you were at New Jersey Policy Perspective in 2013 when the bill was passed, do you know if New Jersey Policy Perspective was called upon to assist in that process of contributing information and opinions as to the EOA 13 and making it a good bill to reach its broadest incentives?

A. Again, I was not employed at NJPP at the time, but in asking my predecessors had our

McCoy - examination/Patel
 expertise been sought, the answer was no.

Q. And there had been a lot of statements that the contributions to the EOA 13 made it a better bill and it was a step up from what existed before. Based on your expertise and your experience at New Jersey Policy Perspective, and your study into this subject matter, can you opine on whether you believe that the bill that was actually passed, is it good policy to reach its goals?

A. I think there are many portions of the bill that are considerably poor policy. And in the sort of journey that the bill took through the legislature, and then adding Governor Christie at the time, he conditionally vetoed the bill, and he, I remember reading my predecessor Jon Whiten saying, "He removed the one good part of that bill which was some workforce protections."

So that was the negative, and then as I said previously, there are many things that could be in this bill that would lead to better oversight, better opportunities for review by both the state government and outside stakeholders and better, more chances to sort of rein in and be

McCoy - examination/Chen
 more targeted with the goals of the programs themselves that were not included, but stakeholders were making those points at that time.

MS. PATEL: Mr. McCoy, I have no further questions for you. It was very important for us to today so you get across the perspective on the meaning of that and I'll hand the it to Mr. Chairman, if you have any other questions.

PROF. CHEN: Well, this is purely a policy question.

EXAMINATION BY
 PROF. CHEN:

Q. One thing that EOA 13 did, it basically removed any upper cap on the potential amount of the awards. Do you have an opinion of whether that was a positive policy move?

A. Considering the State of New Jersey's fiscal standing and the many challenges that we had as a state with regard to the obligations that we continued to underfund and sort of not meet, no, I don't believe that that was a proper decision to make, to have a program where the

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state is unable to determine what spending on this program will be from an earlier basis, is not good, sound or discrete policy.

PROF. CHEN: Thank you, I don't have anything further. Thank you very much.

(The witness is excused.)

PROF. CHEN: That is, I'm sure you will all be relieved to hear, our last witness for this hearing and therefore, I'll not belabor these proceedings. It has been a long day. I will conclude this hearing.

A transcript of today's proceedings will be available upon request. I note, made a further -- not promise, but assertion at the last day, and now we appear, we are certainly trying to explore ways in which we can very conveniently available, hopefully through the use of technology that we've all become accustomed to.

We do plan to conduct at least one more hearing before the beginning of June so that we may have as much information, before we issue our first report. At a later hearing we will allow members of the public

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to offer any relevant testimony about the EDA's tax incentive programs and comments on the evidence we had gathered to further inform us about the direct impact of these programs to taxpayers and companies around the state. We'll make public announcements about those hearings using the same process we've used for this one. So thank you very much for attending, wish you all a good evening and this hearing is adjourned.

(Time noted: 4:40 p.m.)

C E R T I F I C A T E.

I, DAVID LEVY, a certified court reporter and notary public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the proceeding which was held before me on the date and place as hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action and further that I am not a relative or employee of any attorney or counsel in this place, nor am I financially interested in this case.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May 2019.

DAVID LEVY, CLR, CCR
LICENSE NO. 30X100234000

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